

PhD: Restorative Justice & Victimology

**‘RESTORATIVE JUSTICE AS AN ALTERNATIVE
DISPUTE RESOLUTION MODEL: OPINIONS OF
VICTIMS OF CRIME, AND CRIMINAL JUSTICE
PROFESSIONALS IN NIGERIA’.**

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DEDICATION

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May his soul rest in peace (Amen)

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ABSTRACT

This is an original non-experimental research study conducted in Nigeria (West Africa) to survey opinions of victims of crime and conflicts, and criminal justice professionals with regard to exploring restorative justice as an alternative to prosecution in the country.

The aims of this study are two fold: to contribute original evidence to international debate on victims' participation in restorative justice, and to contribute 'Afrocentric' knowledge to international literature and body of knowledge in restorative justice and victimology. The research considers the fundamental understanding of 'restorative justice' including the philosophical arguments in support of and/ or against restorative justice model worldwide. Consideration was also given to the evaluation of the historical development and evolution of this concept and the fundamental principles that have led to its popularity in recent times. The theoretical justifications for restorative justice initiative are highlighted. Anecdotal and empirical evidences in support of the practice methods, and victims' experiences of restorative justice around the world were also reviewed.

The sample for this study was selected in a purposeful sampling of four geopolitical zones: South-South; South-East; South-West, and North-Central from the six geopolitical zones in Nigeria. A total sample of 74 victims of crime, and 77 criminal justice professionals voluntarily participated in the study. The researcher used face to face interviews, and self completed questionnaires: VQIS for victims, and PQIS for professionals. Victim participants were individuals rather than corporate victims, and professionals were serving Nigerians rather than retirees. Participants in both category of respondents were aged 18 years and above. The fieldwork took place in the selected zones simultaneously from December 2006 to April, 2007.

Prior to commencement of the fieldwork, a pilot study was conducted in February, 2005 to test the reliability and validity of the research instruments. Responses from the pilot

study are included in the final data. For the fact that the respondents in this study are ‘hard to reach’ subjects, a multi-modal approach: outcropping, snowballing, and news bulletins were used to get access to as many respondents as possible.

Findings

Though official legislative thinking and news media tend to support retributive ideologies in Nigeria, 81.1% of victims of crime, and 81.8% of the criminal justice professionals indicated supports for restorative justice in this study. This support cut across gender, age, locality, religion, education, taxonomy of crime, and ethnic affinities of respondents.

The findings show that the potential benefits of restorative justice to some victims of crime and to governments that wish to implement it are enormous. To government, restorative justice appears to have ‘value for money’ (vfm) compared to the conventional criminal justice when the “crimino-econometrics” of both policies are considered.

For some victims of crime, restorative justice offers possibility to answer the “why me?” question. To these victims, the answer to the “why me?” question is a vehicle to Intra-Personal Harmony (IPH), and Inter- Personal Reconciliation (IPR), and perhaps to them restorative justice is not only seen as a model of justice but also as a “Harmony Restoration Therapy”.

To other victims of crime (especially victims of property crime) the answer to this important question (“why me?”) has a “victim-autological” implication. By this it mean that some victims have mentioned that since there would not be enough police officers to protect every victim of crime, the answer to why the offender targeted them might serves as a means of self-protection and, or safeguards to prevent future re-victimisation where necessary.

The findings of this study are relatively in line with other cross-national research and evaluations of restorative justice (see Strang *et al*, 2006 for instance), which consistently

concluded that victims of crime are better off after participating in restorative justice compared to the conventional criminal justice process.

The researcher suggests that the Afrocentric knowledge contained in this study is imperative to international academia and practitioners who are often commissioned to chair dispute resolution mechanisms in Africa. The success or failure of their efforts in resolving disputes in Africa, the researcher argues could strongly be dependent on their knowledge of the core African philosophy of Thoughts: cosmology (African ‘worldview’ of conflict, crime, and reconciliation), axiology (African ‘values’ of restoration), ontology (African ‘nature’ and conception of persons), and epistemology (‘source of knowledge’ for Africans).

All in all, the findings of this study demonstrate that the Nigerian respondents are generally positive of restorative justice because its values, principles and philosophy are seen to be congruous with their restorative culture and traditions. Their responses also appear to be a “reactive mechanism” to the organisational behaviour and the modus operandi of the Nigerian criminal justice system at the time of research. Moreover, respondents appear to say that restorative justice is crime preventative (see the victim-autological discourse), truth seeking, economical and developmental (see the criminoeconometric discourse) in values and principles. However, the implications of these findings and the probable pitfalls of this justice initiative were evaluated and discussed in the concluding chapter of this work.

CHAPTER 1

INTRODUCTION

In contemporary times, restorative justice has become a global concept. In view of this international trend more and more people are looking within their existing cultures and finding models and traditions that can be adopted or adapted to suit a culturally sensitive dispute resolution and reconciliation process. However, not very much of this knowledge and practice, or its potential benefits to crime and conflict prevention and social reconciliation, have been researched in Nigeria at the time of this study. And, not very much of how the Nigerian or African restorative traditions could be harnessed to resolve the intractable crime and conflict issues in the country have been given adequate academic attention. More so, because of the globalised nature of the restorative justice initiative; how the African restorative traditions which have been reviewed in chapter two could contribute or has contributed to the emerging restorative justice paradigm might be of research interest to the larger international academic community.

Currently, Nigeria uses a tripartite system of criminal law and justice: the criminal code based on English common law, penal code based on Islamic or Sharia law (in northern states), and traditional law (based on the customs and traditions of the people). The criminal code operates in criminal courts (Magistrate courts, State/Federal High courts, Federal courts of Appeal, and the Supreme Court). The penal code (in the north) operates in Sharia and Alkali courts, and the traditional law operates in customary courts. In spite of these laws, problems relating to crime, conflict, law and disorder are endemic and the intervention models are primarily in accordance with the classical criminal law principles of: retribution, deterrence and rehabilitation with focus on arrest, detention, prosecution and imprisonment (ignoring largely the Nigerian restorative traditions and informal mechanisms of dispute resolution). One problem with this approach is the arbitrary use of criminal justice powers by the agents of justice in Nigeria; an issue that has been documented by Adeyemi (1994); Yusuf (2007) and Ahire (2004). This arbitrariness

breeds corruption and legitimacy crisis in the Nigerian criminal justice system and sometimes, there are concerns among the people that ‘justice’ in Nigeria is for those who have the resources to ‘pay’. This appears to mean that justice administration in Nigeria is likened to a situation whereby, ‘the big fish swallows the smaller ones’ and sometimes ‘the thieves appear to defeat the owner of stolen goods without remorse’ (Omale, 2005:1) Moreover, the criminal justice system in Nigeria is characterised by persistence of a large number of inmates and offenders awaiting trials in prisons and police cells beyond the total capacity of the penal institutions.

It thus appears that in Nigeria, the more the criminal justice system cared about finding ways to deal with offenders through harsh legislation and ‘tough’ policing, the less time and energy is devoted to finding the root causes of crime, and crime control issues related to victims’ needs, interests, aspirations and expectations, and offenders’ behaviour modification, reformation and reintegration.

Perhaps this approach is linked to the reason why the criminal justice system has been unable to demonstrate its effectiveness. Hence, in recent times there has been growing recognition globally that the conventional criminal justice system is not always the most appropriate response to a significant portion of criminal behaviour. This understanding according to Latimer and Kleinknecht (2000), results from several distinct social changes, including an awareness of the needs of victims and a more sophisticated evaluation of the limitations of the criminal justice system. Moreover, the current reliance on incarceration as a sanction, in response to a significant number of offences in Nigeria, has not been overly successful in terms of crime reduction, rehabilitation and reintegration of offenders. In a bid to finding solution to this problem globally, the last decades of the twentieth century have witnessed the resurfacing of appeals to traditional non-statist, truth telling, re-moralising and communitarian modes of justice called ‘restorative justice’.

As a researcher and advocate of the restorative justice initiative, this study seeks to contribute objectively to ongoing criminological debates on ‘restorative justice’, and thus

the primary aims of this research are:

- First, to discuss the concept and understanding or the meaning of restorative justice
- Second, to explore, and to contribute the African perspective to the general arguments in support for and against restorative justice initiatives globally,
- Third, to explore the history, theories and fundamental principles of restorative justice in global perspectives,
- Fourth, to review and explore the variety of ‘sentencing’ options (that is the various models/practice methods of restorative justice around the world) that are available to judges and magistrates in Nigeria outside of prison sentences, by presenting the empirical and anecdotal evidences of restorative justice practices around the world.
- Finally, to explore the opinions of victims of crime and the criminal justice professionals in Nigeria with regard to acceptability of restorative justice as an alternative to penal sentencing.

So, in chapter one of this thesis which is the introductory chapter, the researcher provides an overview of the motivation for this study. He also describes the methodology used for the study; how ethical issues in the study are considered, and the significance and scope of the study are discussed. A brief ethnography of the study area-Nigeria is also highlighted with regard to the social, economic, and political issues relevant to the discourse of restorative justice.

In chapter two, the researcher reviews the conceptual frameworks of restorative justice with specific considerations to the historical and philosophical works on restorative justice, taking into account its African and anthropological discourse. He attempts to

provide the general understanding of the historical development that has led to the popularity of restorative justice, and an overview of the underlying principal argument of the ‘anachronism of justice’. He also discusses and attempts to classify the various theoretical arguments that might have contributed to the emerging restorative justice discourse.

The focus of chapter three is on empirical and victimological evidence in support and/or against restorative justice. The researcher discusses the evidence-based practice models of restorative justice adopted in some countries around the world, and notes some relevant victimological evidence and results for the benefit of Nigeria.

Chapter four is the ‘Research Methodology’. This chapter describes the social research method[s] used in the study; how the subjects are selected, how the primary/secondary data are collected, the description of the research subjects, and the justification for why the method[s] are chosen. The chapter also describes the descriptive statistical method[s] used in analysing the results of the data collected.

Chapter five is the ‘Quantitative Findings’. This chapter presents the quantitative data as collected from the field (that is, ‘the opinion poll results from the research participants’). It also presents the probable implications and interpretations of the results using charts and graphs where possible.

Chapter six is the ‘Qualitative Findings’. This chapter presents the transcribed qualitative data collected from fieldwork. The quotes from transcribed data collected from respondents are presented under thematic schemes to give insights to the reasons why the respondents say what they said.

Chapter seven is the ‘Discussion’. This chapter presents the critical analysis of the raw data presented in chapter five and six of the thesis, and the relevance of the results to some key national issues in Nigeria and international debates in restorative justice.

Chapter eight is the ‘Conclusion’. In this concluding part of the thesis, the researcher discusses the original contributions of this work to the body of knowledge, the potential problems and limitations of restorative justice practice taking off in Nigeria taking into account the Strengths, Weaknesses, Opportunities and Threats (SWOT analysis) likely to be encountered in Nigeria. The United Nations’ opinion on how to tackle the potentials problems in restorative justice are discussed including recommendations of where further works need to be done in Nigeria.

This study therefore provide an insight into the possibility of restorative justice practice in Nigeria, and a review of the historical and anthropological developments that has led to the popularity of restorative justice in modern times. It explore the underlying principles and theories of restorative justice, the most common practice models and victimological research evidence in support of restorative justice initiatives globally.

This study is therefore, imperative for nations where juvenile justice and alternatives to penal sentencing are absent and in Nigeria in particular because at the time of this research, the Nigerian government has no juvenile justice programme, and the prison system is at its crisis point in terms of overcrowding (just like some other jurisdictions around the world). However, the government is anticipating criminal justice sector reforms and is actively seeking viable and practicable alternatives to penal sentencing in the country. If the Nigerian government is to be prepared for the restorative justice ‘tsunami’ (waves) that is blowing the global criminal justice system, and to explore fully the potential and effectiveness of restorative justice, then this study is undoubtedly a relevant piece of work.

Purpose of Study

The involvement of victims of crime and the active participation of victims in the criminal justice process specifically considering restorative justice approaches have been an issue of interest to both restorative justice advocates and some victims’ advocates. Victims’ participation in restorative justice programmes therefore has been generating a considerable debate among both academics and professionals globally about whether

restorative justice offers victims a better deal than the conventional criminal justice system (see Wemmers and Cyr, 2003). This ideological debate is of interest in this study, and to the advancement of restorative justice in particular because, the success of any restorative justice initiative hinges on the willingness of the victims of crime to cooperate in the tripartite arrangement of the: victim, offender and the community.

Moreover, restorative justice advocates argue that the status of victims of crime have been given little attention in the criminal justice process from the beginnings of the modern criminal justice system to recent years. So in recent times, some national governments such as the British government, the United States, Canada, Australia, New Zealand, and a host of others in Europe have commissioned programmes and pilot studies that would use restorative justice to divert cases from prosecution and enhance victims' participation in the justice process.

But, in spite of these developments internationally, we find that some African countries including Nigeria (at the time of this study) do not have adequate systems for the protection of victims of crime (see Adeyemi, 1994) and thus by implication have less active participation of victims in the criminal justice process. The need for African countries and Nigeria in particular to strengthen their systems for victim protection and support and to develop restorative justice policies, procedures and programmes at the same time has therefore become imperative.

Furthermore, in Nigeria at the time of this research there are no real institutional schemes for enhancing victim remedy and the traditional sentiment of reconciliation in disputes settlement is ignored in the criminal justice system. Therefore, often times, the process of arrest and interrogation generate hostility among disputants because in Nigeria, once a policeman is invited for an accused, the social harmony between the complainant and the accused is broken. This is reinforced by the adversary system of trial, which is adopted for the most part of the criminal proceedings. The situation is further compounded by the delay in the adjudication of cases and the frustration experienced by victims. This is coupled with the emphasis of the penal system on the punishment of the offender, rather

than the concern for providing remedy to the victim. Therefore, matters of justice should no longer be left to the whims and caprices of the criminal justice professionals but ought to be viewed from the African traditional tripartite approach of justice for the victim, for the offender and the community (see Omale, 2006).

Taking into consideration these various issues, the researcher decides to investigate and analyze the current situation in Nigeria for instance, and to explore more effective ways to protect victims of crime and encourage more active participation by the victim in the criminal justice process specifically considering the opinion of victims of crime and the criminal justice professionals in restorative justice approaches.

So on the basis of the international recognition attached to restorative justice research as an alternative to prosecution/prison sentencing in recent times, this study seeks an answer to the research question: **'would restorative justice be acceptable to victims of crime, and the criminal justice professionals in Nigeria?'**. In other words what would the victims of crime require in restorative justice? Are there any socio-demographic variables that might impact on the victims' response? What are the likely opinions of the criminal justice professionals in Nigeria as regard whether restorative justice is an effective way of dealing with crime generally and offender specifically?

The need to know or identify what victims of crime, and the criminal justice professionals have to say and how that might impact on the effectiveness of any proposed restorative justice programme in the country therefore becomes imperative. Moreover, while suggestions as to the need for 'Alternative to Prisons,' (see Ibiam, 2000), and 'Alternative Dispute Resolution' (see for instance, the British Department For International Development Country Assisted Programme for Nigeria (DfID CAP, 2004) have been appearing on national discourse no substantial works have been done in Nigeria at the time of this research to seek the opinions of victims of crime, and the justice professionals as to their preference or otherwise of restorative justice as an alternative to prosecution, and to test the effectiveness of restorative justice as an acceptable alternative to prosecution in the country. This research therefore becomes

imperative and undoubtedly the primary research in this field in the Nigerian criminal justice system. It is thus hoped that the findings of this self-funded research would be of significance to whatever intended programmes and projects international donors and technical experts on justice sector reforms might be designing for Nigeria in the near future.

Methodology

This study investigates opinions of 151 respondents comprising 74 victims of crime, and 77 criminal justice professionals in Nigeria. The researcher uses the methodological triangulation model for his primary data collection. That is, qualitative and some elements of quantitative research approaches are used to investigate and analyse the above research question using a semi-structured multi-modules questionnaire and interview schedules. Face to face interviewing method is used in situations whereby participating victims of crime, and the criminal justice professionals preferred it to a self-completed questionnaire, and self-completion questionnaires are handed to those who could read and write. Questionnaires are also sent by post to some research respondents who could not be reached personally due to lack of funds.

The questionnaire/interview schedule contain both closed and open-ended questions, which the researcher use to investigate ‘core opinion areas’ of restorative justice on the interested/ volunteered **victims of crime, and the criminal justice professionals** that participated in the research project. These ‘core areas’ include: the knowledge and conceptual acceptability of restorative justice, choice of restorative justice model, offender type, crime type, opinions of victims’ expectations, and real needs.

The research subjects (i.e. victims of crime and the criminal justice professionals) are selected with their own consent from: police stations; courts; prisons; local community centres and relevant NGOs. The researcher use the following sampling methods/techniques identified by Lee (1993). They include: ‘publication’ in a news media (DfID newsletter); visits to locations where members of the research populations (victims of crime/criminal justice professionals) are likely to congregate (outcropping) with the possibility of harvesting interested participants. The researcher also use the

‘snowballing’ or ‘networking’ methods whereby a volunteer participant is urged to recommend another. Lee (1993) argues that these sampling techniques are best methods to access ‘hard to reach’ research subjects (such as the victims of crime and criminal justice professionals involved in this study for instance).

The study also reviews literature on restorative justice in relation to victimology from secondary sources: textbooks, academic journals and internet database such as the Applied Social Sciences Index and Abstracts (ASSIA).

The statistical data are analysed using the descriptive statistics (such as the chi-square, cross tabulation, charts and graphs) with an SPSS computer package version 14. A fuller discussion on the methodology used for this study, the justification, limitation and procedural safeguards for quality, reliability and validity, sampling techniques, sample size and ethical issues is presented in the methodology chapter.

Ethical consideration

Prior to any research of this nature being conducted the objectives, the voluntary nature of participation, confidentiality, anonymity, and potential uses of findings need to be explained. So the researcher carefully considered ethical issues of this research. The researcher considered some ethical issues such as: the probability that interview questions might elicit post-traumatic stress reactions and or affect the psychological functioning of the respondents; the possibility that non-adult (under 18) victims of crime might participate in the research; the fear on the part of the respondents especially the victims of crime that the research might expose their expressed opinions; the possibility of an illicit post-research relationships developing between the respondents and the researcher (researcher- respondents interference) because, the study is an opinion survey of the victims of crime and that of the criminal justice professionals.

In view of these possibilities, victims’ participation in the study is purely voluntary (no compulsion). A pre-session written introduction providing participants with full information about their rights, the description of the research; voluntary participation;

freedom to withdraw from the project; record keeping; confidentiality and anonymity are included in the questionnaire (see the preliminary pages of the questionnaire design in the appendix). In the same vein, personal information such as name and contact details, and questions that might elicit direct responses are omitted in the questionnaire/ interview sessions. If non-adult (under 18) victims of crime were to volunteer to participate in the research (which never happened), an informed guardian/parental consents would have been sought, and moreover, non-adult (under18) victims of crime whose parents/guardians do not give express consents would have been disqualified from participating in the research. The researcher also took written consent sheets (attached to the questionnaire in the appendix) to the field work sites. Although some respondents signed the consent sheets others were suspicious about signing the form which they associated with fear of surveillance. Given the questionable and potentially disruptive nature of signing written consent in this context, the researcher relied on verbal consent for a significant duration of the fieldwork where written consent could not be granted for suspicion of surveillance.

So, there were safeguards for the protection of child victims, the fear of re-victimization, ‘opening of old wounds’, victims’ safety and/or victim blaming in this study because, the victims were well informed and reassured of the confidentiality and anonymity of their responses. The researcher also made provision for the respondents should they feel psychologically threatened in responding to any question in the study at any point, they were free to redirect the question(s) and/or stop participating in the study entirely. In addition to the socio-psychological support measures put in place, the researcher endeavoured that face-to- face interviews take place in a safe, secured and socially conducive environment such as respondent’s family home, office amongst others. The researcher was also careful of being sympathetic (but empathic/appreciative) with the respondents on the course of interviews to checkmate any potential researcher-respondents interference, contamination of data and/or compromising objectivity.

Moreover, because of individual differences and personality variations, victims of crime who wish to attend the interview session with their close family members as support

network are allowed to do so. In addition, preparation for referrals for psychological services (where necessary) would have been made to one of my Nigeria- based research mentors who is a professor and practising clinical psychologist to handle any unforeseen situation that might arise. However, no circumstance warranting this service happened during the fieldwork. Finally, all paperwork (questionnaires and transcribed data) related to this research are kept under secured locks and will be shredded and destroyed for confidentiality and anonymity purposes two years after the award of the doctorate degree. So, ethical concerns are carefully and successfully controlled in this study hence, Ethical Approval for this research was obtained from the University's Ethical Review Committee (see appendix for the approval letter).

Significance of the study

This study is original and the first on restorative justice and victimology in Nigeria, which hopefully might contribute the African (Nigerian) perspective to the body of knowledge in this emerging discipline. This study rigorously reviews the African restorative traditions, and effectively demonstrates how the “obscured” African restorative traditions in international restorative justice literature could contribute or might have contributed to the emerging restorative justice paradigm.

Since the aims and objectives of every government's policy on criminal justice are to control crime, reform offenders, and maximize costs that would satisfy the citizenry, aggregate information collated on the “crimino-econometrics values” of restorative justice from this study would hopefully be useful for government in its future social policy and budgets on criminal justice sector reform and victimology.

Moreover, while restorative justice may be attractive to offender centered advocates this is not the case for some victim advocates because according to Wemmers (2002:35) restorative justice was not developed by victim advocates but by those working with offenders. However, whether this lack of support of restorative justice by some victim advocates is to the interest of some victims of crime can be found in the findings of this study.

In addition, while restorative justice has been argued by its advocates to be a better way of including the victims of crime in the justice process, it was not clear at the time of the study whether or not restorative justice is an attractive option for the Nigerian victims of crime, and the criminal justice professionals because no previous study have been done to ascertain this before now. If it is, what class of victimization and offence types would be suitable for restorative justice approaches in Nigeria, and what are the real needs, wants and expectancies of the Nigerian victims of crime that might wish to participate in restorative justice? This study investigates these core variables of significance for the future, and presents the results in subsequent chapters of this work for international comparative evidence.

Scope and limitations of the study

Nigeria is a country with a vast land mass, massive population of about 140 million people (men: 71.7 million; women: 68.3million), and a multi-ethnic grouping with over 300 languages (see National Population Commission Report, 2006). In view of these socio-cultural diversities of Nigeria, the size; and the cost of traveling, the researcher could not visit the 36 states of the federation and to interview or survey opinions of victims of crime and the criminal justice professionals from each of the over 300 ethnic language groups. It is therefore suggested that the findings of this study be interpreted with caution. Moreover, opinions survey could be either negative or positive depending on the respondent's state of mind at the time of research; so the findings of this study are relative but objective.

However, for an aggregate and fair national representative sample of the research subjects, the researcher 'purposefully clustered' his sampling on four national geo-political zones of: South-West, South-South, South-East and North-Central (see Map of Nigeria in the appendix) where in his opinion a fair national representative samples of the peoples, cultures, languages and religions are likely to be found. The researcher's choice of the four geo-political zones centred on the conviction that, virtually most cultures, ethnic groups, religion and social class are likely to be found in these areas. This

is because these areas are the centres of industrial, administrative and economic activities in Nigeria. For instance, the cities of Jos/Abuja (North Central) attracts all classes of people in Nigeria because of the iron-ore, tin and columbite mining in Jos whereas Abuja is the seat of government and the administrative headquarters of the Federal Republic of Nigeria. In the South West, Lagos city attracts all classes of people because of its vibrant tourism, economic and business activities. And the South-South /South East are where the oil/gas production takes place which also attracts all classes of people for businesses, commerce, tourism and investments. A fuller discussion on the limitations of this study and its findings is presented in the conclusion chapter.

History and ethnography of Nigeria

A brief review of the history and ethnography of the study area-Nigeria is important for the benefit of international audience who might be interested in the study. It is also important because it might help us locate the ‘root’ causes of violence and crime in contemporary Nigeria, and how restorative justice principles and philosophies might help ‘restore’ the country.

Historically, before 1914, (the period of amalgamation of the Northern and Southern Protectorates, and when the name ‘Nigeria’ was coined from two words: ‘Niger’ ‘Area’ by Flora Shaw-the wife of Lord Lugard), the people in what is now known as ‘Nigeria’ consisted of 4 different 'empires' with different cultures and languages. The ‘Northern Empire’ was composed of the Borno Empire, some Hausa states (Zazzau, Gobir, Kano, Katsina, Birori, and Daura) and some other groups (Gwari, Kebbi, Nupe, and Yelwa). The ‘Calabar kingdom’ which is believed to have been founded around 1000 A.D. The ‘Oduduwa Empire’ which consisted of two main groups: the indigenous people- the Yoruba people whose central religious and cultural centre was Ile-Ife, and the Berbels, who eventually formed the Hausa states and the Borno states. The last is the ‘Benin Empire’ well known for its African sculpturing.

The present day Nigeria which had its independence on 1st October 1960 has the largest population of any country in Africa (about 140 million), and has the greatest diversity of

cultures, ways of life, cities and terrain. It has a total land area of about 923,768 sq. km. (356,668 sq. mi.). Until 1989 the capital was Lagos, before the government moved the capital to Abuja, the Federal Capital Territory (see Map of Nigeria in the appendix).

However, the post independence socio-political development of Nigeria have been characterized by greed, avarice, ethnic hatred, and 'political corruption' among others, which are the root causes of inter-ethnic group conflict and violence, elite rivalry and (crime), with the military wing of each ethnic group as a reserve ace. For instance, in January 16, 1966 (about six years after the Nigerian independence) some young military officers of the rank of 'majors' organised a coup d'état and killed almost all the political and senior military leaders of northern origin in government at the time. This issue has never been discussed restoratively ever since then, instead political leaders consigned it to history. Several years after this event, there has been about seven bloody coups and counter coups, and the marginalisation of the Igbos (the ethnic group that led the 1966 coup) continues to be an unresolved issue in Nigeria. The latent ethnic hatred that evolved from this unresolved issues has created a sense of 'non-mixed multiculturalism' in Nigeria which could be felt among the ordinary Nigerians when social interaction degenerates into quarrels. Hence it is not uncommon to hear an Hausa person calling an Igbo man *iyamiri* (which connotes a starving man looking for water to drink) and an Igbo man calling an Hausa man *aboki* (a fool or a cattle rearer), or an Igbo man calling a Yoruba man *oli-manu* (palm oil drinker) when social interactions degenerates into quarrels. These derogatory terms are used to consolidate the negative assumptions each ethnic groups have about themselves since the 1960s Nigerian civil war. The effects of the 'non-mixed multiculturalism' could as well be seen in human ecology (settlements) in Nigeria. For instance, non-Hausa-Fulani ethnic groups are largely localised in *Sabon-Garis* in northern Nigeria, while non-Igbo settlers are localised in *Abakpa*, and *Anqwa-Hausa* (Hausa quarters) in Eastern, and Southern Nigeria respectively. These forms of human ecology (settlements) make the poor settlers easy targets during religious and ethnic violence in Nigeria which often results in high fatality rate.

Similarly, on the political scene, on June 12, 1993 the most peaceful and fairest democratic election which Chief M.K.O Abiola (a southerner) won was annulled by

military officers of Northern origin in government at that time (perhaps on the basis of North-South political dichotomy)? To get insight into the ‘why’ of the annulment, Retired General Ibrahim Babangida who has ruled for eight years, and was the military Head of State at the time, and other key players in the annulment of the election were invited in 1999 to testify before the Nigeria Human Rights Violation and Investigation Commission (HRVIC) popularly known as Oputa Panel. The perpetrators refused to appear before the panel to testify, and instead seek an order of court restraining the panel from inviting them to appear before it, and from publishing the recommendations of the panel sittings concerning the perpetrators. The court granted their injunctions on the ground of their fundamental human rights. What fundamental human rights? What about the rights of Nigerians whose franchise to elect a leader of their choice, with hope to put an end to religious and ethnic politicking in Nigeria was abused by the few cabals? This decision of the court raised a lot of distrust in the conventional criminal courts in Nigeria because if a judge could use the “law” to truncate the justice of the people, and denies justice for the people (which include: acknowledgement of the abuse, apology, and beg for forgiveness), then there is a legitimacy crisis there. Moreover, as Yusuf (2007) argues, the decision in legal terms ran contrary, if not implicitly, to Nigeria’s obligation under international law to ensure that victims of human rights violations are provided with both the opportunity to be heard and to satisfactory remedy. The outcome of that case demonstrates how the over 30 years of continuous military rule in Nigeria has neutralised, destroyed and diminished the judicial authority in Nigeria and in the eyes of the Nigeria people. This is associated with the unresolved political killings of highly placed political opponents and activists, like Ken Saro Wiwa, Dele Giwa, Mrs Kudirat Abiola (wife of MKO Abiola); M.K.O Abiola (the winner of the June 12, 1993 presidential election), and an Attorney General and Minister for Justice-Chief Bola Ige; all of whom their killers are yet unknown by the “law” several years after. Like many unresolved social and political issues in Nigeria, political leaders, including past President (Olusegun Obasanjo) said that the June 12, 1993 annulment and the associated killings should be counted as part of history for Nigeria to move forward. This statement contradicts his speech at the inauguration of the Oputa Panel on 14 June 1999 which demonstrated his administration’s commitment and determination to heal the wounds of

the past, and a complete national reconciliation based on truth and knowledge of the truth in the land.

How therefore, would Nigeria “move on” when there are unresolved intergenerational ethnic and political crimes and conflicts? How would Nigeria move on when politicians exploits the youths for selfish crimes and political gains? How would Nigeria move on when political leaders corrupts and exploits the law, and “rule by law instead of the rule of law”?

Understanding the historical antecedents of crime and conflicts in Nigeria is thus important if conflict resolution, violence and crime control policy is to be achieved in the country because, there appears to be some tensions between the people’s understanding of justice, and that of the judiciary in transition. Hence, the Institute for Peace and Conflict Resolution (2002:7) in its Strategic Conflict Assessment (SCA) of Nigeria states that: ‘the consolidation of democracy and (even) the survival of the Nigerian state depend on the ability of the State to understand and manage these ‘centrifugal pressures’. But unfortunately, the responses to violence and crime control in Nigeria have been mainly the use of ‘force’ to stop the yeanning voices. Root causes have been allowed to persist and in some cases have been exacerbated by money, ethnic and religious oriented politics. Hence, the Institute for Peace and Conflict Resolution (2002:7) argue in its policy document (SCA) that ‘in order to preserve democracy’ (law and order) in Nigeria the root causes of violence, crime and conflict need to be addressed and a ‘wider range of policy response’ (such as restorative justice for instance) should be considered. This policy recommendation the researcher would argue is imperative because, conflicts, crime and violence is present and prevalent in Nigeria because vulnerable and oppressed people pursue their grievances against the state, in the absence of legitimate and adequate mechanisms and institutions in place for seeking redress. More especially, in situations where people in governance misuses government resources, where executive powers tilt the judiciary in the face of high corrupt practices and embezzlement, and where housing, employment and even ordinary water, and electricity supply are not rights but privileges. Perhaps the responses of the Nigerian respondents in this research might be imperative to the healing of wounds of the intractable ethno-political violence, and help find a new

direction to crime control in the country. For this reason, chapter two and three of this thesis review literature on the principles and philosophy of restorative justice, and ‘evidence based’ effective restorative justice projects around the world for the benefit of Nigeria.

CHAPTER 2

RESTORATIVE JUSTICE: PHILOSOPHICAL AND THEORETICAL DISCOURSE

The knowledge of the concept, principles and philosophy of restorative justice is important for healing the wounds of intergenerational crime and violence in Nigeria. So in this chapter, the researcher attempts to review and explore the concept, history, theories and principles of restorative justice from existing literature. He has done this by first discussing the concept of restorative justice. He also reviews the historical and anthropological antecedents of restorative justice with emphasis on African restorative traditions and how it might contribute or have contributed to the emerging restorative justice paradigm, and how Nigerian policy practitioners might harness this principle to tackle the intractable conflicts and violence in the country. This is followed by an exploration of some theoretical propositions that has contributed to the emergence of restorative justice; which might be of relevance to the Nigeria social circumstances. Some western restorative justice practices and their relationships to some traditional and informal dispute resolution mechanisms in Nigeria are also discussed. The traditional literature method is used rather than the meta-synthesis approach because the study is an exploratory one.

Defining restorative justice

Restorative justice is a new movement in the fields of victimology and criminology. The interventions of restorative justice in the context of the criminal justice are relatively new models of dealing with crime and offending behaviour. So acknowledging that crime causes injury to people and communities, restorative justice insists that justice repair those injuries and that the parties be permitted to participate in that process. Restorative justice programmes, therefore, enable the victim, the offender and affected members of the community to be directly involved in responding to the crime. They become central to the criminal justice process, with State and legal professionals becoming facilitators of a system that aims at offender accountability, reparation to the victim and full participation

by the victim, offender and community. The restorative *process* of involving all parties is fundamental to achieving the restorative *outcome* of reparation and peace. Thus, a number of restorative justice writers such as Wemmers (2002) and Zehr (1985) argue that restorative justice emphasises process as much as outcomes and this is a distinctive aspect of its approach.

Restorative justice is different from contemporary criminal justice in several ways. First, it views criminal acts more comprehensively: rather than defining crime as simply lawbreaking, it recognizes that offenders harm victims, communities and even themselves. Second, it involves more parties in responding to crime: rather than giving key roles only to government and the offender; it includes victims and communities as well. Finally, it measures success differently: rather than measuring how much punishment is inflicted, it measures how much harm is repaired or prevented in the community.

However, the questions of how ‘community’ as a concept in restorative justice is to be understood in modern societies have been raised by some restorative justice writers (see Dignan, 2005:98) because of the absence of the kind of communities that exist in pre-modern societies. But mindful of the recognition that there are a few neighbourhoods in modern industrialized societies, Dignan (2005:99) argues that the concept of community ought to be defined and/or understood without regard to ‘geographical or spatial parameters’. Hence, Braithwaite (1989:172) gave instance of what he calls ‘communities of interest’, that could be based on interactions in workplace, occupations and leisure, or what Dignan (2005:99) refers to as ‘social communities’ such as schools, churches and community organizations. Another notion of community identified by Braithwaite (1999:17) is what he refers to as ‘communities of care’. The term ‘communities of care’ in this case refers to ‘group of people who are committed to care for, protect, support and encourage an individual’ (Dignan, 2005:100), and not necessarily the relatives of the victim and offender. This clarification of the concept of community is important so as to widening the minds of those who might be “fixed” in the understanding of community as that only present in pre-modern/rural settings.

The term ‘restorative justice’ according to Stout (2002:52) has been defined differently by different writers, and at times, has been abused to refer to any process involving a ‘victim,’ ‘rehabilitation’, or a ‘process originating from a community rather than from the state’. However, Tony Marshall’s definition seems to be more conspicuous and used in most restorative justice literature.

According to Marshall (1999:5), restorative justice ‘is a problem-solving approach to crime which involves the parties themselves and the community generally, in an active relationship with statutory agencies’. One salient point to note in this definition is what the researcher might call the advocacy for ‘state or criminal justice agents assisted’ restorative justice model because victims, offenders and community participation in restorative justice here is to be actively supervised by statutory or governmental agencies; whereas, the Mediation UK (2002:2) defines restorative justice as ‘a process whereby victims, offenders, and communities are collectively involved in resolving how to deal with the aftermath of an offence and its implications for the future’. The Mediation UK definition however, did not advocate the active participation of statutory or governmental bodies as evident in Marshall’s definition. The latter could therefore be called the ‘community based’ or ‘the community assisted’ restorative justice model.

The sharp contrast in the two definitions above poses the question as to whether restorative justice and the criminal justice are mutually exclusive, or work side by side. This therefore raises the tension and question of conflict of opinion as to whether restorative justice should be ‘contained’ in the criminal justice or otherwise.

However, as the heat of this debate lingers on Stout (2002:52) re-echoing the work of Johnstone (2002), identifies what the researcher might call the “four cardinal points” of restorative justice which strongly supported the ‘community based’ restorative justice model. Johnstone believes that every true restorative justice model should have the following four ideals and characteristics:

- Crime is, in essence, a violation of a person by another person, and this is much more significant than the breach of legal rules

- In responding to crime our primary concern should be to make offenders aware of the harm they have caused, and to prevent them repeating that harm
- The nature of reparation and measures to prevent re-offending should be decided collectively and consensually by offenders, victims and the community
- Efforts should be made to improve the relationship between the victim and the offender to reintegrate the offender into the community

Similarly, Zehr and Mika (2003: 41) provide a helpful list of what they regarded as the essential characteristics and principles of restorative justice. These include the important idea and recognition that:

Victims and community have been harmed and are in need of restoration, and consequently that
 Victims, offenders and the affected communities are the key stakeholders in justice, that
 Offenders' obligations are to make things right as much as possible, but that
 Voluntary involvement is preferable: 'coercion and exclusion should be minimised'.

They go on to argue that

The community's obligations are to victims and to offenders and for the general welfare of its members, that
 Victims' needs should be the starting point of justice, that
 Dialogue should be facilitated, and that
 The justice system should be mindful of the outcomes, intended and otherwise, of interventions in response to crime and victimisation.

Williams (2005) however argues that their model is deliberately provocative, and has a rhetorical element because it clearly and far removed from the reality and practice of most existing justice systems. However, the authors according to Williams (2005) agree that the above stated characteristics and principles are 'aspirational rather than being descriptive of any current system'. Nevertheless, Williams (2005) further argues that the characterisation is useful in providing 'an ideal type' against which to test the claims of particular projects or initiatives that might claim restorative principles.

Hence, the conception of restorative justice in the opinion of Restorative Justice Consortium UK (2002) is that:

Restorative justice (should) seek to balance the concerns of the victim and the community with the need to reintegrate the offender into the society. It (should) seek to assist the recovery of the victim and enables all parties with a stake in the justice process to participate fruitfully in it (RJC, 2002:6).

In the opinion of Johnstone (2002:2), the most common way of explaining restorative justice, is 'to describe it as a distinctive process'. That is, a process that makes those who caused the harm acknowledge the impact of what they have done and gives them an opportunity to make reparation. Johnstone (2002) notes that restorative justice offers those who have suffered the harm the opportunity to have their harm or loss acknowledged and amends made because according to Zehr (1990) conflict between people is inevitable, but where it occurs restorative justice can help to 'restore' the balance in a just and fair way. In resolving the harm done it works to prevent it happening again. Hence, the intentions of restorative justice according to Mediation UK (2002) therefore are to introduce 'greater flexibility, individual participation, and community involvement' where these may help restore the well being of victims, their families and the communities damaged by crime, and prevent further re-offending on the part of the offender.

All in all, restorative justice in the opinion of Restorative Justice Consortium (2002) is a matter of 'humanising' criminal justice, in the ways which do not interfere with overall fairness and just procedure, by making room for involvement, seeing crime in its social context, and taking a forward-looking or problem-solving approach to all the issues that might be involved. Perhaps when combined with legal justice, restorative justice might create a 'holistic justice'. That is, justice not only from the point of view of a judge but also of the victim, the community and the offender.

Historical and Anthropological Review

To offer a backdrop for our understanding of the concept of restorative justice, this section will examine a brief history of the idea. An historical review of restorative justice might also help us to understand what factors influenced the move away from restorative justice in favour of the conventional criminal justice and why we might in the recent

times want to move back towards this model in our current social context globally.

It has been admitted that while there have been many theories attempting to explain the origin of the 'move away' from restorative justice to retributive system, none has succeeded in offering a 'plausible and satisfying theory of its origin' (Bianchi, 1994:15). Bianchi however, notes that restorative justice which is, 'the old systems of conflict resolution, repair, and dispute settlement survived, openly or covertly, in many centuries'. Llewellyn and Howse (2002:6) also argue that there seemed to be agreement that the move from restorative justice to what 'we know today as public, state centered, retributive justice began as early as the eleventh and twelfth centuries'. Zehr (1990) in his own argument suggests that 'it took until the nineteenth century for retributive justice to gain prominence'. According to Zehr, whatever other factors that might have prompted this change, 'it was clear, at least in part, that it was motivated by the desire for political power both in the secular and religious spheres'. Legal Historian Berman (1983) argues that this change amounted to what he called a 'legal revolution'. This revolution according to Zehr (1990:110) resulted in a 'reconceptualization of the nature of disputes'. By this time, Zehr (1990:110) argues that the crown had proclaimed itself 'keeper of peace' and as such would be the victim whenever the peace was violated. The role of the courts he argued changed in suit; no longer was their task to referee between disputing parties requesting their involvement but 'courts now took up the role of defending the crown and began to play an active role in prosecution, taking ownership over those cases in which the crown was deemed victim'. To these courts, Zehr argues 'justice came to mean applying rules, establishing guilt, and fixing penalties'. According to Llewellyn and Howse (2002) this role of the crown resulted in devastating and lasting effects for the real victims harmed by wrongful acts. They were no longer parties in their own cause, because as Christie (1977) put it, their disputes have been effectively 'stolen' from them. This according to Christie remains the situation of the contemporary criminal justice today as 'victims have little or no power with respect to their case' and cannot initiate or stop or settle a prosecution without permission of the state, and can often be locked out of the process altogether if they are not useful as a witness in the case.

As a support to the historical existence of restorative justice before now, Wright (2003) in his work 'Justice without Lawyers' reviews the historical existence of restorative approach to conflict resolution existing among the Kpelle people of Liberia, Mexican Zapotec Courts, the Tiv people of Nigeria, the Barotse and Korean traditions. Similarly, Elechi (2006) in his book 'Doing justice without the state' extensively reviews some restorative traditions of dispute resolution amongst the Igbos in South East Nigeria. Weitekamp (2003:111) also in his work 'The History of Restorative Justice' looks at the anthropological origin of restorative justice practices and claim that restorative justice had existed in what he called 'the acephalous societies' (non-state) and 'early state societies'. Weitekamp further argues that some of the new programmes of restorative justice are in fact very old. He states that:

Ancient forms of restorative justice have been used in societies and by early forms of humankind. Indigenous people such as the Aborigines, the Inuit, and the native Indians of North and South America have used family group conferences and circle hearings. It is kind of ironic that we have at the turn of this century to go back to methods and forms of conflict resolution, which were practiced some millennia ago by our ancestors (Weitekamp, 2003:111).

Similarly, Braithwaite (2002:3) in his work 'The fall and rise of restorative justice' argues that restorative justice has been conceived as a major development in human thought which was grounded in traditions of justice from ancient Arab, Greek, and Roman civilizations which accepted a restorative approach even to homicide. He gave instances of the restorative approach of the public assemblies of the Germanic peoples who swept across Europe after the fall of Rome; Indian Hindus as ancient as the Vedic civilization of 6000-2000 B.C for whom 'he who atones is forgiven'; and the ancient Buddhist, Taoist, and Confucian traditions that is blended with Western influences in today North Asia. In the same vein, Consedine (1999) argues that this 'reputedly new justice' (restorative justice) is 'really not new' because:

Biblical justice was restorative. So too was justice in most indigenous cultures. In pre-colonial New Zealand, Maori had a fully integrated system of restorative justice. It was the traditional philosophy of Pacific nations such as Tonga, Fiji and Samoa. In pre-Norman Ireland, restorative justice was interwoven with the fabric of daily life (Consedine, 1999:11).

Restorative justice conceptions therefore could be argued to have their roots in both western and non-western traditions. Thus, Llewellyn and Howse (2002) argue that a move towards a restorative model of justice is perhaps best understood as a return to the roots of justice, and not as a new-age justice for an ailing criminal justice system.

In modern times, however, Llewellyn and Howse (2002:4); Gehm (1998:3), have generally credited, a psychologist known as Albert Arthur Eglash to have coined the term 'restorative justice' in his 1977 article 'Beyond Restitution: Creative Restitution'. The conception of justice to which he referred was however, not new judging from the above review and as criminologist Braithwaite (2002:3) tells us that, 'restorative justice has been the dominant model of criminal justice throughout most of human history for the entire world's people'.

Restorative Justice and the African restorative traditions

The historical conception of restorative justice is not only limited to those mentioned above, rather, we can find some interesting history in the lasting traditions of many African and non-Western societies. However, Stout (2002:55) argues that there 'has been concern that much of what is claimed to be ancient African, traditional justice is based upon anecdotal evidence and unsustainable claims' and, Costa (1998:526), considers the very idea of African customary law to be an oxymoron: 'trapped in the belief that African law is not law per se, but a form of custom, and primitive practice which predates law'. Similarly, Daly (2000) and Blagg (1997) argue that to 'describes ancient justice as necessarily restorative is to romanticise the past and to provide an excuse for re-colonising indigenous groups'. The researcher is however arguing that, as far as the concept of restorative justice in Africa is concerned, there is a word that goes some way to explaining it. It is a word from the Nguni language family, which comprises Zulu, Xhosa and other Bantu tongues. The word is *Ubuntu*, a philosophical belief system and communitarian thesis of 'I am because you are', and 'because you are therefore I am' (see Mbiti, 1970).

For instance, in pre-colonial Africa, many African citizens resolved their disputes

restoratively using traditional and informal justice forums based on the principle of *ubuntu*. Despite the popularity of this system among the Africans, these forums were regarded as obstacles to development during the colonial area (maybe due to a clash of paradigms between existing methods of doing justice and that of colonial power). The emergence of the restorative justice paradigm in the west has made the researcher review the African restorative traditions in this section of the literature. Furthermore, the researcher supports the argument of Keulder (1998:294) who states that 'those who have criticised the African informal traditional justice system as being too traditional to promote development are often too simplistic in their arguments', because the critics are bound up in the traditional-modern dichotomy in which 'traditional' to them is equated with 'backward' and 'modern' with 'advanced' initiatives. So to them, development could only occur within a 'modern' framework. The main problem with this equation according to Keulder is that it is based on a very static and simplistic view of tradition because it ignores the fact that traditions are often 'invented' and hence, very 'modern' in content. It is thought by these critics of African traditions that as Africa modernised the African informal and traditional justice would eventually die out. This of course the researcher would argue did not occur because informal and traditional modes of dispute settlement in Africa have remained as wide spread as ever, and even receiving international attention in the form of the 'restorative justice paradigm?'.

Cain (2000) with her experience teaching criminology in non-western cultures supports the above argument when she says that the issues which were most salient in other cultures and context might not be covered at all in western criminology texts, and that the theoretical presumptions of western criminology were as likely to be misleading, or at best to miss the point, as to be helpful. She argues that an analysis of these difficulties revealed the twin failings in western criminology of 'orientalism', which romanticizes the other, and 'Occidentalism', which denies the possibility of difference, or seeks to explain it away. Thus she argues that the deep presumptions of western theories (some criminological theories for instance) may be harmful for non-western consumers of them.

So in spite of the orientalistic and occidentalistic views of some western criminologists

the informal and traditional dispute resolution approaches have remained relevant among most Africans for reasons such as that: the vast majority of Africans continue to live in rural villages where access to the formal criminal justice system is extremely limited; or that the type of ‘justice’ offered by the criminal justice courts may be inappropriate for the resolution of disputes between people living in the rural villages or urban settlements where the breaking of individual social relationships (*ubuntu*) can cause conflict within the community and affect economic co-operation on which the community depends, and /or that the criminal justice system in most African countries operates with an extremely limited infrastructure (with its attendant delays in administration of justice) hence, does not have the resources to deal with minor disputes in settlements or villages. Other factors might include distrust of ‘settlers’ justice’ (especially, but not only, in South Africa) and a desire to avoid bringing trouble by involving remote (and sometimes corrupt) urban police in rural disputes.

Whatever the factors that might have contributed to the sustainability of the African informal justice system, the main purpose of traditional dispute settlement in Africa according to Merry (1982:20) is to ‘restore social harmony’ and ‘reconcile the parties’. And the essence of reconciliation in African restorative traditions according to Lederack (1975) is both a ‘focus and a locus’, a place where victims and offenders, and the community come together to create the possibility and social space where both truth and forgiveness are validated rather than a framework in which there must be a “victor and a vanquished” as in the case of the conventional criminal justice system. The penalties, therefore, usually focus on compensation or restitution in order to restore the *status quo*, rather than punishment. For most people in Nigeria and Africa, Adeyemi (an Oxford trained professor of law and criminology) argues that justice is traditionally about restitution and must be seen by the people to have been done. Imprisonment has never traditionally existed as a penalty for any offence (Adeyemi, 1994) but corporal punishment, however, has been administered by a number of traditional systems on juvenile offenders, and sometimes the traditional justice forums may order restitution of, for example, twice the number of the stolen goods to the owner, ‘especially when the offender has been caught in “*flagrante delicto*” and fines may be levied’ (Elias,

1969:20). So in pre-colonial Nigeria and Africa, the traditional justice in a number of societies assumed an adjudicatory role for most serious/violent crimes such as murder, rape and witchcraft. On some occasions, in an event of serious/violent crimes the victim's family would accept a penalty of compensation such as '*nkuchi*', or '*ikwala*' (see Omale 2005:16) and/ or banishment of the murderer from the community, sometimes with his/her nuclear family.

Thus, in the pre-colonial African societies, Robert (1979:51) notes that 'enforcement of justice, law and order lies within the complex of relationships'. That is, although formal coercion is rarely resorted to, Igbokwe (1998:469) argues that 'social pressure plays a powerful role in achieving compliance'. Igbokwe justifies his argument when he said that 'the high degree of public participation' in reaching a solution to a dispute in the African traditional justice 'means that disobeying a final ruling (agreement) is tantamount to disobeying the entire community and may attract social ostracism'. Robert (1979:27) argues that 'this involves the withdrawal by other members of the community of both social contact and economic cooperation'. So in Aboriginal societies, ostracism has more than a symbolic significance because it represents not only "social death" but a threat to the individual's livelihood especially where food depends upon collaborative efforts and hunting and safety depends upon social efforts. This separation from one's group in traditional African society (and in other societies such as Canadian Aboriginal and feudal England) has been likened to what Justice Oputa (1975:8) called a 'living death'.

In the traditional African societies, the disputants' desire to reach and abide by an agreement and the public's interest in ensuring an outcome is also strengthened by 'the fear that supernatural ancestral spirits may be disquieted by the breaking of rules and quarrelling, and 'respond by causing illness or material misfortune on the wrongdoer's kin or on the community as a whole' (Robert, 1979:42). So it is generally believed among most Africans (especially the rural dwellers in Nigeria) until now that breach of a taboo or omission of some appropriate offering to the supernatural spirits by an offender may cause illness or disease to someone or the community as a whole, other than the offender or wrongdoer. Hence, in most African cultures (including some societies in modern

Africa), the community or group is seen as a continuing self-perpetuating entity embracing both the living and the dead. The law of the community, therefore, is conceived and accepted as the possession and heritage of an endless chain of generations and an act of rebellion against the legal *status quo* is regarded as abominable not only in the eyes of the living but also of the supernatural ancestral spirits who it is believed perpetually hover around and to protect the community.

In as much as this supernatural belief may sound unscientific to the educated and the Western criminologists and peace practitioners, it has helped in crime control, reconciliation and reintegration of offenders in most African societies especially Nigeria. Moreover, this knowledge of cultural variation in the criteria and concepts of reconciliation is imperative for western restorative practitioners who often are likely to be presiding on conflict resolution issues in Africa. In Nigeria for instance, for the elders to be sure that genuine reconciliation has been achieved after dispute mediation, both parties may be expected to eat from the same bowl, drink palm wine, *burukutu* or local gin from the same cup and/or break and eat kola-nuts. This forms part of the reconciliatory approach intrinsic to most African traditional dispute mediation. The public or conference participants also partake in the eating and drinking as an expression of the communal element inherently present in any individual conflict and of their acceptance of the offender back into the community. Christie (1977) echoed this in his Arusha (Tanzania) experience.

To support the above assertion and to confirm the significance of the above traditions in dispute resolution in Africa, the Penal Reform International (2001) citing the work of Beatie (1957) presents a case study from the Bunyoro Kingdom in Uganda thus:

Everyone present (at the mediation meeting) agreed that Yozefu (the offender) failed in this case...So I asked the village headman to take us to the sub-county chief's headquarters, so that I could accuse him in the chief's court (the formal native court). But many of the people present said to me 'Yakobo, it would be better for you to allow him pay a "fine" of beer and meat, in accordance with our Nyoro custom of forbearance and good manner'. So I said, 'All right; in that case I shall go home, and if he comes to my house and begs forgiveness I shall forgive him, but if he does not come I shall accuse him in the sub-county

chief's court'. He came in the evening...and we told him that he should bring four jars of beer and a goat...On the day arranged...He came, bringing two pots of beer. Then the neighbours who were present said, 'Ho Yozefu, what are you bringing beer here for? Are you coming to marry here or what?'...he begged me to accept two jars of beer only, as he had not been able to get any more. I said that I would accept them, but I reminded him that it was only owing to my kindness that he was not in prison, and I warned him that if he committed a similar fault in the future I would certainly take him before the chief's court...So I and all the people there drank the beer, and we danced, and the matter was finished' (Beatie, 1957:37 in PRI, 2001:35).

Some critics of African traditional justice might argue that the offender in this case is made to suffer by being compelled to spend his money on meat and beer. The Ugandan Bunyoro has the answer to this 'Why should he (the offender) be angry or hurt? He consumes his share of the things he buys, and he enjoys the feast just as much as others do' (see PRI, 2001:35). The main objective then appears to be to reintegrate the offender into the community and, if possible, to achieve reconciliation and social harmony without causing bitter resentment; or as the Ugandan Bunyoro put it 'to finish off people's quarrels and to abolish bad feelings' (see PRI, 2001:35).

This ceremony in Bunyoro (Uganda) therefore encourages social harmony and total forgiveness expressed in the communal eating and drinking, and moreover, not only does the offender have his share of food and drink he has provided, but he is himself the host. This according to the Ugandan tradition is a praiseworthy thing; because, from a dishonourable offender he is promoted to an honourable 'host'. So the beer and meat the researcher would argue is not a 'fine' in the criminal justice sense of it; for their significance is re-integrative, rehabilitative and reformatory rather than punishment. The ceremony therefore marks the sense of genuine acceptance of agreement as essential for ending of hostilities between disputants and the restoration of harmony within the community and among both parties. Braithwaite (1989) suggests that this form of ceremony is echoed in the modern rituals of reintegration after shaming.

It is on the basis of the above argument that the researcher would argue that with regard to the restorative justice paradigm, it will be important for the West to remember that Africans have as much to learn from the West as they do from Africans. Hence, a

Canadian Project Coordinator Perrott (2004:1) in his 'Finding Community Alternatives in the Gambia' argues that Africans, with their societal focus on collectivist values and communitarism, have a much longer tradition of settling problems at the village level than does the West. Even presently, many criminal matters never come to the attention of the police, but are settled by Councils of Elders (see Omale, 2005:52) under the leadership of village chiefs or regional chiefs. Remedies sought during these mediation sessions are consistent with the principles of restorative justice insofar as the law-breaker must make amends for his or her actions.

However, the only problem is that the process sometimes is seen as arbitrary, paternalistic or unjust, with decisions often based along tribal, gender or other political lines, and especially disadvantaged in the process in Nigeria are women who often remain in a position of relative powerlessness in this still highly patriarchal society. For instance, a female victim may find her perpetrator making amends to her father or husband without much consideration being given her. Hence, there are feminist concerns on this because as an *Igalla* adage put it: "in the court of chickens cockroaches are always guilty." Take domestic violence dispute, for example.

In the West, Perrott (2004:2) argues that many jurisdictions do not allow for police discretion when an assault is reported; mandatory arrest of the perpetrator is the policy. Hence, restorative justice policies of most Western jurisdictions exclude the possibility of many serious offences being diverted from the formal court system, with domestic assault typically viewed in the serious category. But in Nigeria and most parts of Africa, domestic assault (especially husband and wife dispute) is still considered a 'private matter' and usually goes unreported to the criminal justice system. And should a woman report an assault to the police, she typically would be advised to return home and try to better get along with her husband because (even) the criminal justice system sees marriage as sanctity, and a marriage failure is seen to have a "domino effect" and negative effects on future behaviour of offspring. Ironically, then, when domestic assaults are reported to the Council of Elders and dealt with at the village level by the Council of Elders for instance, this would represent an increased recognition of the seriousness of

the act, and not, as many Westerners might perceive, a lessening of magnitude. It is important to note here that while this practice need to be improved to recognise the concerns of the feminists it however, does not significantly underscore the rights of women as the West or the feminist criminologists might have thought but it is premised on the African philosophy that “you cannot take a friend to court and still remain friends”.

Van Ness and Strong (2002) and Sterne (1999) thus found some of these interesting histories in the pre-colonial African societies where justice aimed less at punishing criminal offenders than at resolving the consequences to their victims. These authors noted that sanctions in the pre-colonial African societies were compensatory rather than punitive, and were intended to restore victims to their previous position. Although the term *ubuntu* is not in any of the Nigerian tongues, but in Nigerian cultures, it is easy enough to see similar philosophical principles. For instance, Omale (2005:16) argues that there existed in pre-colonial Nigeria forms of sanctions used amongst the *Igbo* tribe of the South-East Nigeria. These include the ‘*nkuchi*’ and ‘*ikwala*’, which, literally means ‘replacement’ and ‘shaming’ respectively. The *ikwala* sanction Omale noted, is a form of spiritual sacrifice of ‘confession’ made to the ‘gods’ of the land by the offender or his immediate family to cleanse the land and the victim that has supposedly been defiled by the offending behaviour (e.g. in rape cases). Where property crimes were committed, *nkuchi* was the most appropriate form of sanctions. However, both forms of sanctions could be suitable in some circumstances. Similarly, the researcher is arguing that ‘oral traditions’ and ‘personal ethnographic experience’ [living in a rural community] has shown that in some Nigerian communities if a man steal from someone’s farm, he might choose to dance round the farm several times singing “I am a thief, please forgive me” or choose to go and do some hours of farm work with the victim to restore the relationships. Where the task of restoring the relationship (especially in severe/serious crime) is so much for the offender, the kinsmen do contribute morally or otherwise to relief his burden.

Highlights on the critiques

In spite of the significance of the African restorative traditions to restorative justice principles, there have been critical comments on this by some authors. For instance, Stout (2002) has argued that authors such as Skelton, (2002); Roche, (2002) and those earlier cited, have expressed that many African traditional forms of justice disposal are not necessarily restorative, but the researcher is arguing that the above African customary dispute resolution principles and African restorative traditions reviewed in this thesis are however, in concord with the restorative justice framework. Hence, Justice Balonwu (1975:48) argues that ‘what the earlier colonial masters’ and possibly these authors (Daly, Blagg, Skelton and Roche) did not understand about the African pre-colonial judicial system is the difference in the handling of civil offenders and non-apologetic criminal offenders. For instance, Justice Balonwu (1975:48) notes that in the pre-colonial Eastern Nigeria, *Osus* (e.g. non-repentant criminals) or their ancestors (whom originally were freeborn), could subsequently be bought by a family or individual at a command of a diviner, and/or offered as slaves to some deity. This customary tradition according to Justice Balonwu (1975:48) was however abolished in 1956, as being ‘repugnant to natural justice, equity and good conscience’. Justice Balonwu (1975:48) and Oputa (1975) therefore note that while Alternative Dispute Resolution/Restorative Justice principles applied to all civil matters in those days, non-repentant criminal offenders, or offenders whose family members are non-cooperative, attracts banishment, ex-communication, etc. The later (draconian) measures as applicable to criminal matters, were to some extent what discouraged the earlier colonial masters to abolish the African pre-colonial judicial system (Justice Balonwu 1975:48). However, Reverend Father (Professor) Stan Ani in a Television Programme entitled “Values” similarly argues that, what the earlier colonial masters forgot to understand about Africa is that ‘Africans has ground norms of justice. They know that at the level of “justice”, you do not forgive somebody who have not repented but in the level of “systemic thinking”, you can forgive somebody who have not repented’ (Stan Ani T.V interview 2005).

Supporting the above assertion that pre-colonial African justice system was indeed not

barbaric Justice Balonwu (1975:31) cites the testimony of Sir James Marshall, a director of the 19th century Royal Niger Company, who later became the first Chief Justice of the West Coast of Africa (now Nigeria, Ghana, Liberia, Sierra Leone, etc) under the company's administration. The London Times of July 17, 1886 reported Sir James Marshall's statement about the West African pre-colonial justice system thus:

His [Sir James Marshall] testimony as to the efficiency with which the natives administer their own laws is very striking. He has sat beside native judges, and witnessed with admiration their administration of justice. These people have their own laws and customs, which are better adapted to their condition than the complicated system of English jurisprudence. The adoption of them would, it is maintained, be more conducive to the best interests of all than the present system (London Times of July 17, 1886 in Justice Balonwu, 1975:31).

So African justice encapsulated in the concept of '*ubuntu*', which is the 'organic wholeness of personhood' or 'the natural connectedness of the humanity of persons', recognises the interdependence of personhood which has to do with wellbeing, happiness and membership of a community. Villa-Vicencio (1996:527) in his work 'Identity, Culture, and Belonging', Braithwaite (2002:5), and Llewellyn and Howse (2002:7) all corroborated this assertion as they attempt to explain the traditional African understanding of the concept of *ubuntu* as enshrined in the popular Xhosa proverb. The *Ubuntu* concept is also popularised in the musical track of late Brenda Fassie's: *umuntu ngumuntu ngabantu* (a person is a person through persons), and Sutuhuzaki Arosi's musical label '*UBUNTU*'.

Van Ness and Strong (2002) attempt defining *ubuntu* as: 'I am because you are' or 'my humanity is tied up with your humanity' (also see Mbiti, 1970). Llewellyn and Howse (2002:7) agreed that the effect such a conception of humans (i.e. *ubuntu*) would have on one's understanding of justice is clear because, 'if one's humanity is tied up with the humanity of all others what makes others worse off also brings harm to oneself.' In other words, restoration requires attention to each part that suffers, 'for restoration is impossible if a part of a whole is harmed'. Hence, the "broom adage" in Nigeria (which represents strength in unity) believes that "there is strength in our togetherness" or that

“our strength is in our togetherness”. Similarly, the “soiled finger” idiomatic expression is popular amongst the Nigerians because as the saying goes “what happens to the eye happens to the nose” too. Which is why, there is a general notion among Nigerians that ‘one cannot keep quiet when a kinsman is “dancing” wrongly’. All of these cultural philosophies are a demonstration of communitarian principle and a sense of oneness, or the connectedness of the human persons.

Hence, Braithwaite (1989) argues that reintegrative shaming is most likely to be found in societies such as Africa’s that are characterised by communitarianism and a high level of interdependency (*ubuntu*) among its members. He noted that:

For a society to be communitarian, its heavily enmeshed fabric of interdependencies therefore must have a special kind of symbolic significance to the populace. Interdependencies must be attachments which invoke personal obligation to others within a community of concern (Braithwaite, 1989:85).

Llewellyn and Howse (2002:3), Sterne (1999), and Van Ness and Strong (2002) note that colonialization has replaced much of this African customary form of societies, and sanctions with a Western individualistic, and retributively oriented system. However, instances such as the ‘South African Truth and Reconciliation Commission’, the ‘Nigerian Human Rights Violation and Investigation Commission (Oputa Panel)’ and ‘the *umuvumu* tree project’ in Rwanda which, is to prepare prisoners accused of genocide and the community members for the country’s *gacaca* hearings (judgment on the grass/fields) and eventual reintegration of the prisoners into society, have demonstrated that there has of late been a move by Africans to return to the restorative approaches embodied in their traditional practice. Karstedt (2002) also progressively argued to support the above argument that the paradigm of restorative justice might have evolved from the indigenous cultures of the developing nations. In what seems to be a conclusive assertion to this argument Karstedt (2002) argues that the internationalisation of restorative justice is a significant development, because it has demonstrated that restorative justice paradigm is one of the few ideas that can be seen to have travelled ‘from developing countries’ to ‘industrialised nations’, rather than the other way around (see Stout, 2005:73).

Anachronism of justice

The historical evidence of restorative justice reviewed above supports the claim of Braithwaite (2002) that, 'restorative justice has been the dominant model of criminal justice throughout most of human history for the entire world's people'. However, in spite of the above historical antecedents of restorative justice, many historical accounts of justice and the administration of justice have served to obscure this history. Bianchi (1994) argues that the reason for this obscurity might be due to the fact that 'scholars, particularly those from the West', were so attached to the punitive model of justice, which forms the backbone of our current justice system, that they were unable 'to contemplate the success and existence of other models in other times and places'. This failure of imagination according to Bianchi (1994:10) has led scholars when faced with evidence of other historical responses to crime, and other conceptions of justice, 'to ignore it and seek passionately for vestiges of a punitive model in history'. Bianchi supported this claim as he states that:

Although punitive criminal law is a rather late development in Western history and, in its present form, is a construction of recent modern times, many learned scholars in this field believe in the shaky dogma and assume that our present punitive structure of criminal justice depends on some kind of eternal and natural law, having always existed, though in a cruder form, and having survived because it turned out to be more suitable (Bianchi, 1994:9).

As a result of this failure of imagination, Bianchi (1994:9) was so critical when he laments that, 'the fallacies of anachronism, have played a regrettable role in the historiography of crime control; professional historians, well aware of the danger of anachronism, have until recently ignored the history of criminal policy and left study of it to jurists, who were often insufficiently trained'. Bianchi (1994:10) defines anachronism as 'the tendency to make a false reconstruction of history by attributing models of thought, customs, and social structures to a period of history to which they could not have belonged'. He argued that among the anachronisms developed in support of our current conception of criminal justice is the use of the idea of criminal law with respect to ancient societies. He argues that the mere use of the terms 'criminal law' and 'crime control' in reference to ancient law and legislation is already an anachronism. He further argues that

after using the modern word ‘crime’ in a historical study of ancient law, ‘we then apply it to a culture, which, like all ancient cultures, had no official public prosecutors and had no special criminal trials, a culture in which criminal policy was not even a part of public law’. In particular, he points to the fact that neither the Romans nor the Greeks had any word meaning ‘crime’ or ‘punishment’. Using Biblical interpretation and translation to further his argument, Bianchi argued that the most widely used anachronism with respect to concepts of justice is the use of the Bible and Hebrew law as justification for retribution. According to him, the *lex talion*, of ‘an eye for an eye’ in the Old Testament, is repeatedly cited as justification for retribution. Llewellyn and Howse (2002) also claim that this *lex talion* has served as powerful support for the retributive justice system but however, noted that there are serious problems with the use of the *lex talion* for these purposes. Hence, Consedine (1999:147) reminds us that this phrase, taken as central to the concept of justice in the Old Testament, actually only ‘appears four times’ in the Bible (see for instance, Exodus 21:23-25; Leviticus 24:19-20; Deuteronomy 19:21 and Mathew 5:38-40). He argues that the most problematic, is not the infrequency with which it appears but the inaccuracy with which it is translated. Zehr (1985:21) also suggests that the translation of an ‘eye for an eye’ as a basis for retributive justice is simply ‘an oversimplification’, Bianchi (1994:29) is much stronger in his condemnation when he says ‘we are here concerned with a gross example of intentional “error” in the translation of a Biblical text’. He explained that in nearly all passages in the Old Testament where English translations use terms such as ‘retribution, or retaliation’, one could find in the Hebrew text the root and corresponding word *sh-l-m* [well known as *shalom*], which signifies ‘peace’. He argues that not only is retribution not intended, it is specifically forbidden as the Bible commands ‘do not retaliate, for mine is the peace, says the Lord’. Bianchi thus argued that an “eye for an eye” was intended as a limit never to claim more than the value of what is damaged and, not a call to retribution (Bianchi, 1994).

As a support to this explanation, Zehr (1985) explained that the *lex talion* was intended to bring peace through compensation aimed at maintaining the power balance between groups. He argued that when the constituent elements of society were families and tribes as was the case in the Old Testament, it was possible to conceive restoration of social

equality as entailing the sacrifice of a member of the perpetrator's tribe in compensation for the loss of the victim from her tribe. Omale (2005:22) thus argues that this philosophy of justice locally known as '*nkuchi*', which literally means 'replacement', survived amongst the *Igbo* tribe in Nigeria until recently. The focus was compensation, re-establishing the balance disturbed by the loss of a member of one's tribe. According to Zehr the idea of *shalom*, restoration and not retribution was therefore central to the concept of justice in the Old Testament where 'restitution and restoration overshadowed punishment as a theme because the goal was restoration to right relationships' (Zehr, 1985:5).

Llewellyn and Howse (2002:5) in support of Bianchi's anachronistic paradigm argued that part of the effort to recreate a history supportive of our current criminal justice system, was the portrayal of pre-modern justice 'as vengeful and barbaric, in contrast to the more rational and humane approach of modern justice'. Their argument was that this anachronistic recreation of pre-modern justice was to enable retribution and state control to be seen as necessary counters and the inevitable alternative of private vengeance and blood feuds. The pre-modern period before state centred justice is therefore often referred to as a time of 'private justice' by the anachronists to justify their argument. The use of this term Llewellyn and Howse (2002:5) argue was a source of misunderstanding because 'private justice' according to them 'conjures images of revenge, a private or personal evening of scores, of unregulated, unrestrained, generally violent, response to wrongdoing' which, is not a balanced portrayal of the operation of justice before state involvement. Zehr challenged the advocates of retributive justice to take a closer look at the history of justice, which reveals that other models of justice have predominated throughout most of Western history. Zehr describes this challenge when he states that:

It is difficult to realize that the paradigm which we consider so natural, so logical, has in fact governed our understanding of crime and justice for only a few centuries. We have not always done it like this. Instead, community justice has governed understandings throughout most of our history. For most of our history in the West, non-judicial, non-legal dispute resolution techniques have dominated. People traditionally have been very reluctant to call in the state, even when the state claimed a role. Infact, a great sense of stigma was attached to going to the state and asking it to prosecute. For centuries the state's role in prosecution was quite minimal. Instead it was considered the business of the community to solve its own disputes (Zehr, 1985: 6).

Mika and Zehr (2003: 149) thus argue that the historical growth of criminal law and state justice may have caused the destabilization of local community justice systems; and, second, that state justice may have gained ascendancy because local justice has declined. In either case, Dhami and Joy (2006) argue that the aim of restorative justice is to return the responsibility for responding to crime and victimization to the community.

Zehr (1985) therefore argues that the administration of justice before the advent of state justice was primarily a mediating and negotiating process rather than a process of applying rules and imposing sanctions. He argued that the appropriate descriptor for this early period of justice was 'community justice' as disputes were connected to and resolved by the community. Community justice, according to him, recognized that harm had been done to people, that the people involved had to be central to a resolution, and that reparation of crime was critical. Community justice therefore placed a high premium on maintaining relationships, and on reconciliation and not punishment. According to Van Ness and Strong (2002), the goal of this kind of justice process was to make things right by repairing the damage to those parties concerned, whether the damage was physical, financial or relational. In his own contribution to this argument (the history of restorative justice), Hoebel in his work 'The Law of Primitive Man' compares the working of the primitive law with that of a doctor. He notes that 'just as doctors were charged with keeping the human body in healthy balance, [pre-modern] law was to keep the social body in good health by bringing the relations of the disputants back into balance' (Hoebel, 1973:279).

Some Theoretical and Philosophical discourse

The historical and anthropological review and understanding of the fall and rise of restorative justice discussed above gives us the background understanding to the principles, philosophies and theoretical bases of restorative justice discussed below.

According to Mantle *et al* (2005:19) attempting to connect accounts of restorative justice programmes with criminological theory has proven difficult. The authors argue that many

descriptions of restorative justice programmes make little reference to theoretical or philosophical underpinnings, while statements about aims and objectives, rationale, procedures and models of intervention are often unclear and relate unevenly with what happens in practice. For example, the authors argue that even though restorative justice can be characterised by the principle of centrality of the victim, Miers *et al* (2001) found that real restorative justice programmes were of two main types: those with a primarily offender-oriented approach and those that afforded equal emphasis on the victim. However, Gehm (1998), and Llewellyn and Howse (2002) argue that restorative justice theory owes much to recent movements aimed at addressing the failures of the existing criminal justice system and developing new ways of 'doing justice'. Van Ness and Strong (2002:16) identified some of these movements as:

First, *the informal justice movement*, which emphasized informal procedures with a view to increasing access to justice and participation in the legal process, the movement rediscovered 'restitution as a response to crime control' and focused on the needs of victims, maintaining that meeting the needs of victims would serve the interests of society more generally.

Second, *the victims' rights movement* works to have the right of victims to participate in the legal process recognised. Van Ness and Strong (2002) however argue that none of these movements alone has led to restorative justice theory, but noted that all have influenced its development, if only because many who are now preoccupied with restorative justice came to it from one of those perspectives.

Latimer and Kleinknecht (2000) noted that amongst these movements was the 1970s movement among prisoners' advocates and academics to protect the rights of offenders, to restrict the use of imprisonment and to improve the conditions within prisons. This movement according to Latimer and Kleinknecht (2000) was driven by an increasing understanding within the social sciences that criminal behaviour was, in a large part, a result of adverse social conditions. This understanding they argue, coincided with a movement away from adversarial litigation as the only method of resolving conflict.

Processes such as mediation, arbitration and negotiation therefore became more common in civil and family law. Moreover, Latimer and Kleinknecht (2000) further argue that there was an increasing demand on the justice system to offer a more substantive voice and to provide a more formalised role for victims in the criminal justice process.

Some of these philosophical and theoretical arguments have been classified below for our clearer understanding of the subject matter. While the philosophical and theoretical arguments below are presented as distinct, they are somewhat artificial in that the ideology and philosophy often overlap or are quite similar.

Victims' Participation in the Criminal Justice Process

According to the wisdom of conventional criminal justice, the just and fair (or the most appropriate) response to a criminal act is best determined by criminal justice professionals (the police, judiciary and prisons). According to Barton (2003:48) the main deficiencies of this wisdom are that, no matter how competent the criminal justice professionals might be in their respective professions, they typically do not possess the detailed knowledge and appreciation required for addressing successfully the specific justice and welfare needs of the principal parties (especially the victims) involved in the criminal justice conflict. This is principally due to the fact that criminal justice professionals and judicial policy makers inevitably operate with bureaucratic and procedural priorities that usually fail to reflect the justice needs of the primary parties involved. As a result, most often, outcomes and decisions reached by criminal justice agents tend to prove unhelpful, or even counterproductive, for the people who are already in considerable or serious trouble and distress, and who have the most to lose again by the criminal justice response. In this approach, the parties (victims and offenders) feel no ownership over responses and outcomes that are decided, and are sometimes forced on them by the judicial process. Consequently, even wise and competent decisions by the criminal justice professionals sometimes tend to result in less satisfaction for the parties than the parties would have expected if they were arrived at freely by the parties themselves in negotiation with one another. So the process of our criminal justice system today disempowers both parties in the conflict and creates a sense of isolation and

unnecessary enmity between them, thus exacerbating feelings of helplessness, anger, hatred and fear, which in turn worsen the plight of everyone involved (victims and offenders alike).

Arising from this disempowerment of the stakeholders involved in conflict, Barton (2003) argues that the antiquated criminal justice philosophy whereby lawyers and prosecutors speak for the parties seriously fails to acknowledge that wrongful and offending acts are primarily a violation of specific people-the victims of crime (where victims are identifiable) and not the “State”, the “Law”, the “Commissioner of Police” or the “President” where applicable. Therefore, it is the victim who is the primary and most legitimate claimant against the offender in a criminal justice process that should be given a “voice” and not the prosecutor or the lawyer. This subrogation of the victim of crime with these kinds of abstractions in criminal justice is increasingly receiving attention by victims’ advocates and is recognised as criminal justice’s failure to respond to victims’ justice issues.

Recognising this fact earlier in the 60s, Stephen Schafer (1968:31) wrote that: ‘the violator of public order is also an offender against an individual victim. There has been renewed recognition during the past few decades that crime gives rise to legal, moral, ethical and psychic nexus not only between the violator and society, but also between the violator and his victim’. In the same vein, the United Nations General Assembly (1985) in its ‘Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power’ (Resolution 40/34 of 29th November, 1985) calls for the treatment of victims of crime in the criminal justice system, which includes information, restitution, support as well as opportunity to express their views at appropriate stages of the criminal justice process.

So advocates of restorative justice such as Van Ness and Strong (2002), and Zehr (1990) argue that while in the criminal justice process, the offender is seen as having committed an offence against the state, victims have very limited opportunity to say how they have been affected by crime and the system keeps victims and offenders apart while others

speak for them, whereas restorative justice sees the harm done by crime as an offence against the person or organisation, allows victims the opportunity to participate, brings victims and offenders together with an impartial mediator/facilitator to consider from all points of view what has happened and find out what can be done to help put it right.

It is in view of this argument that Zehr (1990) argues that victims of crime should be given options to determine whether their victimizer should go to prison or not because, according to him, in our current criminal justice system all powers are given over to the state agents:-the police, judges and prison officers. The victims and offenders are left powerless; victims because they are shut out of the justice process right from the beginning, and offenders because they are not offered the opportunity to take the real responsibility for their behaviour and actions. Instead, Consedine (1999) claims that the orientation is merely to punish and the twin notions of taking responsibility and making things right are ignored. According to Consedine, the aim of any good law is to build a strong, safe, healthy and just society. Thus, in dealing with crime, punishment or 'just desert' must be in proportion, must contain a message of denunciation or moral censure, and must provide protection to the community and reparation to the victims and not to make the offender worse. For this reason, Consedine (1999) worries as to how criminal justice (punishment) has become something the dominant group in society imposes on those of little status and power who are not in a position to challenge its fairness or its usefulness. According to this argument, the political authorities are seen to be doing something about crime, but because what they are doing is counter-productive and actually a cause of more offending, crime rates in most countries continue to climb and more and more disempowered people get caught in its net. He notes that the criminal justice system turns the search for justice into a game of legal technicalities played between lawyers in court. These legal technicalities Consedine (1999) argues, override the victim's priorities and considerations, as well as any other rational concern for protection, rehabilitation and ultimate healing of the relationship with the victim, offender or the community. He therefore argues that new and constructive non-retributive and violent options must be pursued to enable wrongdoers to take responsibility for what they have done and encourage their attempts to repair the damage done to the victim

and/or the community. Lynch (1997) supports this assertion as she argues that what goes on in court proceedings is not the best and proper way to deal with conflict among persons who intend to have continuing relationships after the conflict has been dealt with. Hence, Consedine (1999:11) suggests that ‘society needs to discover the philosophy that moves from punishment to reconciliation, from vengeance against offenders to healing for victims, from alienation and stigmatisation of offenders to restoration and reformation, from negativity and destructiveness to healing of wounds’.

In support of this argument, Van Ness and Strong (2002) agree that something is wrong with our ideas about criminal justice. They argue that, for one brief moment the victim and the offender confront each other; a situation of which crime is established and one wounds another. But society seldom deals with the wound. The criminal justice system tries offenders when it catches them, and it sometimes sends them to prison, not for the injury done to the victims, but because they broke the law. So now we have two wounds, and no healing. The wounds multiply. Friends and neighbours of the victim, concerned for their own safety, start taking greater precautions. Fear is also a wound. Van Ness and Strong (2002) note that the families of prisoners, unable to deal with the separation and stigma, begin to draw apart. Another wound. The victims who are recovering and the prisoners who are being released discover that the community cannot accept them as victims or ex-prisoners, and they conceal that part of themselves. More wounds. Van Ness and Strong (2002:4) argue that we must hold offenders accountable because they have broken the law, but suggest that the offenders can be held responsible in many ways. ‘It is in our best interest to find those ways that heal wounds, not create new ones’.

Failure of Criminal Justice

According to Barton (2003:15), those who argue in favour of a restorative response to offending behaviour, rather than the judicial/ court- based approach, usually base their arguments on the grounds that criminal justice is only or mainly interested in retribution, and that retribution and restorative justice are incompatible. It is also argued that ‘deterrence does not deter’, and retributive philosophies do not successfully control the increase in crime waves in many countries of the world including Nigeria, and therefore

the criminal justice has failed, which necessitates the need for an alternative. This search for legitimacy of the criminal justice system according to Williams (2005) is one possible explanation for the enormous growth of interest in restorative justice since the 1980s, and that this growth has indeed followed closely upon the identification of the crisis.

For instance, in Nigeria a serving Minister of Justice and Attorney General of the Federation (Bola Ige-the chief law officer of the country) was murdered in his family home on 23rd February, 2001. Several years after, investigation that could lead to the arrest and prosecution of the suspect(s) has often been truncated by the “law” because of the profiles of the suspects behind the murder. Efforts by the wife of the victim (who herself was a Judge of the High Court) proved abortive as she described the trial ‘as a shame to the judiciary’ (see Babarinsa, 2004). The pain of the inability of the victim’s wife to successfully prosecute the case led to her dying of a heart attack. The irony of this case is how (in) effective is the criminal justice system in Nigeria that we are unable to get ‘justice’ even for a justice minister?

The question is would restorative justice have been better in this case? Perhaps, yes because in criminal prosecution of high profile case such as this, potential victim’s witnesses, judges or any one helping the police in investigation are more likely to be harassed, intimidated or even threatened in any way before, during or after the prosecutorial trial with the aim of subduing or inhibiting the facts of the matter and the truth. So evidence such as this however, show on the contrary, that, over reliance on the criminal justice system to some extent is ‘positively harmful’ (see Sim and Fitzgerald, 1982:155 for instance). Hence, Williams (2005) argues that a number of criminal justice commentators in recent decades have pointed to this legitimacy crisis in the criminal justice systems in general and in relation to prisons in particular. This legitimacy crisis Williams argues develops when the confidence of the subjects of criminal justice: victims, offenders and communities wanes to such an extent that they begin to challenge its fairness and the right of the state to intervene in their lives. If the system is not recognised by those involved in it as fair, just or effective, it tends to generate a sense of ‘learned helplessness’ (Seligman *et al*, 1978) and a “search for better alternatives” (such

as restorative justice or community justice for instance), which considers different methods of resolving conflicts, and move towards more local and re-moralising model, and less state-dominated approaches to justice.

Subsequently, with regards to over reliance of imprisonment of the common criminals, the evidence is also 'positively harmful' hence, Consedine (1999:18) argues that the more punishment we dose out to wrongdoers because we are punitive people, the more we will be forced to live with the fruits of our desire for revenge. He substantiates his assertion when he says 'the evil of our prison system is that not only are our prisons generating more criminal activity, but they are promoting crime' because 'every year prisons take large numbers of hopeless people and turn them into bitter hopeless people'. Hence, Oscar Wilde (1896) in his 'Ballad of Reading Gaol' stanza 5:3 similarly states that 'every prison that men build is built with bricks of shame, and bound with bars lest Christ should see how men their brothers maim'.

In Britain, Lord Bingham of Cornhill, the former Lord Chief Justice of England, also has concern for alternatives to penal sentencing when he argues that the reason for the exponential increase in penal sentencing is due to the vocal expression of opinion by influential public figures that imprisonment is an effective measure of justice. He argues that 'injustice may be done, by the imprisonment of those for whom that penalty is not strictly necessary' (Home Affairs report, 1998:1). The Home Affairs Committee (1998:1) therefore note that the rapidly increasing prison population, and the problem associated with it [that is, the requirement of justice to avoid unnecessary imprisonment, the strain placed on the Prison Service, the detrimental effect on regimes and the Cost-Benefit-Analysis] 'provide the context and demonstrate the importance of finding effective alternatives to prison for those who can safely be punished in the society'.

Zehr (1990) supporting this position, advises that we need to 'change our lenses' about crime and criminal justice because, the lens we use to examine crime and justice affects what we include as relevant variables, what we consider their relative importance to be, and what we consider as proper outcomes. He argues that we view crime through a

retributive lens and that any criminal justice process, which uses that lens, fails to meet many of the needs of either victim or offender. The contemporary criminal justice process he argues, neglects victims by making them strangers in their own case while failing to meet its expressed goals of holding offenders accountable and deterring crime.

Criminal Justice as ‘victor justice’

Another disproportionate philosophy of criminal justice opposed by the restorative justice philosophy is the danger of what Tiemessen (2004) calls the ideology of ‘victor justice’. Most often in criminal victimisation, both parties to the conflict (victim and offender) remain in the same communities together after the offence. The perpetrators of the offence are individualised in legal process without regard to social antecedents. Individuals who are victims, Tiemessen argues must coexist in the same social space with those who offended against them. The crux of the matter if the researcher may ask is how does criminal justice expect the ‘victor’ and the ‘vanquished’ to continue living in harmony in the same social space after such judicial pronouncement? Obviously, this is not possible. Hence the price of retributive justice (victor’s justice) is either of a continuing enmity or a permanent conflict between both parties. It is understood that retributive justice is a form of justice, which flows from power. Restorative justice philosophy however, challenges this principle because if criminal justice which claims to dispense ‘justice’ encourages ‘victor’s power’, then is criminal justice not simply ‘revenge’ masquerading as ‘justice?’.

The Need for Recognition of Indigenous Law

Another theoretical proposition according to Braithwaite (2003) that has contributed to the emergence of restorative justice is the rejection of the Western criminal law system by the Aboriginal people of Canada, Australia and New Zealand. According to this theoretical argument by Braithwaite (2003:15) the need to restructure ‘the rule of law by allowing the justice of the people’ to bubble up to ‘reshape the justice of the law’ so that ‘the justice of the law could be more legitimately constrained to the justice of the people’ plays a significant role in the emergence of restorative justice theory. This argument

claims that the Western criminal justice system is being used to steal the land from its original owners, stealing the children from their mothers, making the owners of the land trespassers in their own cultures and causing an ‘ epidemic of Aboriginal deaths in custody’ through the ‘infliction upon them of the Western institution of prison’. Native peoples therefore see the criminal justice system as injustice because they view imprisonment as something that removes them from spiritual contact with their traditional lands, and sealing them off from any prospect of healing.

In a similar development, a survey conducted by Penal Reform International (2002:9) supports this assertion when it argues that ‘ high cost of litigation, inflexible nature of proceedings and slow pace of determining cases, corruption and high technicality has made the formal court system unattractive to a vast majority of the citizens of Africa’. For instance, in Nigeria a judge who persistently sends young offenders to prison has his son told in school that his father was a thief. When he stood up in class to explain that his father was a respected judge of the High Court, his mates put it to him that ‘yes, he steal people’s children and keep them in the prisons’ (see Ibiam, 2000:15). According to the report that judge who is now retired, is a strong advocate of Alternative Dispute Resolution initiative in Nigeria.

Williams (2005) argues that this debate about legitimacy, in some countries (such as Canada, the USA, Australia, South Africa, Ghana, Nigeria and New Zealand, among others) has been fuelled by concern about the justice system’s disproportionate impact upon poor members and minority groups in the society and the perception that it can help to restore the damaged fabric of disrupted social groups, and perhaps facilitate the return to pre-colonial ways of doing justice. So, Aboriginal cultures in such countries according to Williams (2005:60) have been mined for alternative models of justice which offer possible solutions both to the ‘legitimacy crisis’ ((also see Tankebe, 2008 on police legitimacy in Ghana) and to the ‘impoverishment, deracination and alienation of many modern native communities’. In the same vein, Bottoms (2003:106) notes that the ‘greater willingness and acknowledgement of [Aboriginal cultures] that the imposition of western-based criminal justice systems by settling colonists has alienated these

communities, and the lack of legitimacy in their eyes may have also helped to strengthen the appeal of restorative justice for policymakers in such countries'. The strength of this theoretical argument in the Nigerian context is presented in the findings and discussion chapters of this thesis.

The Arbitrary Definition of Crime

Another theoretical argument within the modern legal discourse identified by Latimer and Kleinknecht (2000) is that a crime is defined as a wrong against the state. Accordingly, a representative of the state prosecutes an individual accused of having committed a crime. The critical point of this contention according to Zehr (1990), Latimer and Kleinknecht (2000), and Barnett (2003) is the failure of this definition to recognise the victim because; it is the victim that experiences the actual harm caused by a crime. According to these authors, restorative justice theory therefore advances a more victim-centred definition of criminal behaviour wherein the harm or wrong is against the individual victim rather than the state. Barnett (2003:50) argues that the victim, who has a critical stake in the process, requires input and meaningful participation as well as reparation, because in a case of robbery for instance, 'the armed robber did not rob society; he robbed the victim'.

Similarly, another theoretical proposition that has contributed to the emerging restorative justice paradigm lies in what Wright (1991), and Consedine (1999:11) called the 'arbitrary definition of crime'. According to this argument, crime is a three-part definition: First, as 'an act punishable by law', second, as 'an act forbidden by statute', and third, as 'an act injurious to the public welfare'. But as a society, Consedine (1999) argues that we focus exclusively on the first and second definitions neglecting the third thereby defining punishable offences arbitrarily. Therefore, the boundary between what is crime and what is not, Wright argues, continues to change arbitrarily because the decision as to what is defined as crime and what is not, is grounded on morally arbitrary choices about which actions could threaten the rulers' social position or control. Hence, Wright argues that the distinction remains today, the will of those with the power to define crime 'with an eye to social control'. As a support to this proposition, a Canadian prison

abolitionist and restorative justice advocate, Ruth Morris (1997:7) was agitated as to ‘why the criminal justice system was geared towards sifting the poor and minor offenders, while pretending to be dealing with crime and social harm, when all the major harm was being perpetuated by the hidden rulers of this world’. Thus, the researcher is arguing that crime definition to some point is purely used as a criminal justice politics to subjugate the poor, the underprivileged, and the minority peoples of the world based on the whims and caprices of the rich and rulers of the world. For instance, in Nigeria, “there are other crimes and other criminals”, and some of these “other criminals” do untold havoc to the economy and the general well being of society. But they are dressed in clean white collars and wear suits of delicate taste and assume an air of respectability [in social, economic and political scenes]; they operate scarcely noticed, let alone being ranked as criminals, which is what they are (also see Oputa, 1975:3).

Those who commit crimes of greed the researcher is arguing thus make laws that make their acts, omissions or commissions lawful whereas, the actions; inactions or omissions of the “others” are classified as crime. For instance, while the Nigerian courts granted injunctions preventing the Nigerian Human Rights Violations and Investigations Commission (Oputa panel) from inviting three former Nigerian Heads of State and their cabals testifying before the commission’s sittings in 1999 on the grounds of their fundamental human rights, the human rights of the ordinary Nigerians whose franchise were annulled in the June, 12 1993 election for instance, and who suffers endemic poverty due to white collar corruption of men in high places are however irrelevant to the courts in their own wisdom.

The Theory of Re-integrative Shaming

Another theory of restorative justice is Braithwaite’s ‘re-integrative shaming model’. Braithwaite (1989:69) argues that the criminological literature on deterrence has provided important motivation for turning to informal methods of social control such as ‘re-integrative shaming’ as key to controlling crime. He argues that reintegrative shaming provides several positive effects for both society and offenders. According to him, reintegrative shaming starts with an expression of disappointment in the individual who

has done wrong. In the philosophy and understanding of the reintegrative shaming model, offenders are not seen as an 'evil person'. Instead, they are seen as a person who breaches norms of the community. Therefore, it could be argued that expressing remorse and regret for having behaved out of context (i.e. breaching norms of the community), society is more likely to welcome back offenders. Moreover, in reintegrative shaming, Takahashi (2005:29) argues that the offender's morality could be reaffirmed by shaming his/her misbehaviour and that 'shaming builds consciences' (moral educational aspects of shaming) while at the same time serves as a deterrent when conscience alone fails to deliver conformity (i.e., deterrent aspects of shaming). Braithwaite (1989:69) therefore notes that literature on deterrence 'shows reasonable support for an association between the certainty of criminal punishment and offending, but little support for the association between crime and the severity of punishment'. In his view therefore, deterrence research has demonstrated a much stronger effect of informal sanctions on deviance than formal legal sanctions. He supports this point of view when he says:

It would seem that sanctions imposed by relatives, friends or a personally relevant collectivity have more effect on criminal behaviour than sanctions imposed by remote legal authority. I will argue that this is because repute in the eyes of close acquaintances matters more to people than the opinions or actions of criminal justice officials (Braithwaite, 1989: 69) acting on behalf of an abstract entity- the state.

Braithwaite (1989:69) citing the work of Blau (1964) points out that 'a person who is attracted to others is interested in proving himself attractive to them, for his ability to associate with them and reap the benefits expected from the association is contingent on their finding him an attractive associate and thus wanting to interact with him'.

In the same vein, Collins (2004) in his theory of 'interaction ritual' postulates that since people are physically in each others' presence and thus influenced by proximity (as in community bond), the emotional contagion therefore is likely to bind members in a commitment to shared morality. Similarly, Nathanson (1992) in his psychological 'affect theory' argues in the same vein when he says that shame is the 'central social regulator' that governs our social interactions because our need to feel good about ourselves, and our need to belong is fundamental to our human existence. He argues that those who experience a sense of shame also experience a sense of 'social isolation' because shame

that humiliates or stigmatizes tends to be associated with degrading and exclusionary feeling which, Nathanson suggests, could evoke four possible negative responses: attack others, attack self, avoid, or withdraw. Braithwaite's primary focus and argument therefore is on de-legalization of sanctions in an effort to minimize the stigmatization and coercion resulting from the existing criminal justice system.

Sawasky (2002:4), however, fears that Braithwaite's re-integrative shaming theory of restorative justice relies so much on some concept of an active community with the belief that there are indeed communities of care ready to unleash their creative and restorative potential. His fear is 'whether we will find enough resources for restorative justice to work in a highly individualistic and mobile community' of our time. Marshall (1999) also notes that the problems which he envisages with Braithwaite's re-integrative shaming theory are the feasibility of its practical application in most contemporary/urban societies where communitarianism is giving way to urbanism. Similarly, Bottoms (2003:110) fears that restorative justice is unlikely to work well in contemporary (urban) societies as it does in more traditional ones. This is because according to him restorative justice, even in traditional societies only works well if the victim and offender have either a 'thick' (family) or 'thin' (culture) relationship with each other. So in some modern societies, however, there may be no relationship at all, other than that related to the criminal event. Bottoms thus warn that any attempt to use a 'blanket' delivery of restorative justice will always achieve modest and/or patchy results (Bottoms, 2003:110). Hence, the researcher want to note the fear of re-integrative shaming being misapplied or misinterpreted in Nigeria by for instance, "the boys oyez groups" who believes that to "burn thieves alive" (a situation whereby angry mob put motor tyres on the neck of suspected thieves and set fire as often times seen in urban Lagos in Nigeria) is a form of shaming the thieves and the families.

Social Control Theory

Another related criminological theory that could be perfectly linked to the theory of re-integrative shaming, is Hirsch's (1969) 'control theory', which argues that state intervention in criminal justice cannot replace the power of community ties and

community acceptance to control of misbehaviour. The philosophy and/or the concept of community control here according to Williams (2005: 63) should be seen as 'built of individuals and families' who have the power to promote positive change. If they have appropriate attitudes, Williams argues they can 'remoralise' society, however divided and deprived it might be because a 'communitarian society would be based upon trust, respect, participation, responsibility, solidarity and mutual support, not upon threat, coercion or fear' (Williams, 2005: 63). This theory thus seeks to place responsibility for dealing with crime in the hands of the communities in which it occurs, with the State system being used as a last resort. Similarly, Karp and Breslin (2001) argue that when responding to crime, focus should be on the harm caused by the act and on its antecedents. The offender should be encouraged to make amends, restore the harm, or make restitution or reparation. Communities should be encouraged to support offenders so that they are able to achieve these ends (perhaps using mentors) so they could deal with the factors that are seen to have led to the crime. Communities also should be asked to support the victim as they deal with and recover from the effects of the crime committed against them rather than the 'State's definitional framework and orbit of responsibility' (Karp and Breslin, 2001:295). Here, the role of the community as the major player of crime control was emphasized. The argument of this old sociological positivist theory of crime is closely related to Braithwaite's arguments in his re-integrative shaming experiments cited above.

Theory of Neutralisation

Matza's sociological theory of crime was not particularly designed for restorative justice; Marshall (1999) however, suggests that Matza's theory of 'neutralisation' in which offenders neutralise their criminal actions by justifying that 'victims deserve what they get' could be applied in restorative justice especially in the Victims-Offenders mediation practice. In this case, Marshall argues that a face-to-face confrontation with the victim as practiced in restorative justice [VOM] might make the offenders face up to the reality of the harm they have caused, or according to Hudson (2003:182) make the offender 'see the other [victim] as a real person'.

Citing the work of Bandura, Barton (2003:50) supports this argument as he identified four such rationalisation mechanisms often used by offenders. They include:

- Rationalisation about good consequences/moral justification (for instance, an armed robber robbing a bank could morally justify his action by saying ‘If I make enough money on this, I can later help others’). But must he rob to help others?
- The second form of rationalisation often used by offenders is ‘Denial’ of the seriousness of the harmful effects on others (for instance, an offender stealing from a wealthy family might rationalises that ‘They won’t mind’; ‘They are rich, they will be fine’; ‘After all it is only a little cash from the plenty’). But does the money belong to the offender? If he needs money from the wealthy man why not approach him for financial assistance instead?
- Another form of rationalisation is ‘obscuring or lessening personal responsibility for a wrongful act (for instance, an offender caught by the law enforcement agent might say ‘It wasn’t my fault. I just did what I was told’; ‘I played only a small part in the robbery’; ‘others do it, why can’t I’). Must we do crime because others do it?

Another form of rationalisation is ‘Victim blaming’ (for instance, a rapist might say ‘She was almost half naked or indecently dressed, she was drunk’; or a thief after stealing an item would say ‘He is a foolish man, should not have left the windows open’; etc). Would the offender be happy if he was in the victims’ circumstance, or it could be put to the offender that should he think that ‘one should do unto others what he wishes others do unto him?’

As a correctional psychologist in the Nigerian prison service, the researcher is arguing that some of the above rationalisation are often used by offenders, and could be challenged in a restorative justice opportunities by the mediator with some of the

examples and counter questions asked above, or the victims could tell offenders face-to-face about the harm the offenders' actions have caused. With this mechanism, offenders' internal defence mechanisms of rationalisation are more likely to be challenged and, in some cases, reversed. Thus, the application of the Cognitive Behavioural Therapies (CBT) such as the Rational Emotive Therapy (RET) for instance, could be relevant in deconstructing the minds of the offenders if applied effectively in restorative justice in this case.

It could then be argued that when the victim confronts the offender, the offender gains insight into the impact of the crime. This has a significant psychological benefit to the victims as well as offenders because often, offenders are ignorant of this aspect, not understanding the real consequences of victimising another person. The application of this theory to victim-offender mediation brings out the fact that the victim is seen as a real person and not just one of those faceless people out there. This theory therefore ensures that offender answers the *why me?* question often asked by victims of crime, and does not neutralise his offending behaviour but is made to face the truth, and accepts responsibility for his offending behaviour for the future. A thorough understanding of the theories of 'Neutralisation' and 'Cognitive Behavioural Therapies (CBT)' to "deconstruct" the minds of offenders are therefore of significance to restorative justice practitioners.

Restorative justice as a modified 'restitutory justice'

The linking of restitution and restorative justice is not erroneous as restitution is often an important part of restorative justice practices. But is restorative justice all about restitution or compensation as in the context of criminal law? A better understanding of the term 'restitution' in the context of the restorative justice paradigm is therefore worthy of discussion in this section of the thesis. This clarification has become imperative because, at the formal presentation of 'Understanding Restorative Justice: A Handbook for Criminal Justice stakeholders' cited as Omale (2005) in this thesis, a professional colleague who is sceptical of restorative justice argued that "restorative justice is nothing more than the principles of compensation in tort law". This argument tends to lump

together as restorative almost all the alternatives to penal sentencing that apply compensation in their outcomes. There are however, important and unmistakable differences with this conception.

To support this argument, Llewellyn and Howse (2002) argued that while restitution can serve a number of purposes in criminal law, most of the restitution applicable therein is not restorative. For instance, in Nigeria while freezing of accounts, seizing of cars, mansions and properties that have been acquired with “419/fraud” money of arrested fraudsters (as was in the case of late Emeka Anejemba vs. the Nigeria Economic and Financial Crime Commission) does satisfy the demand of restitution in criminal law, it however, does not satisfy the demands of justice conceived of as restorative in nature.

In criminal law, restitution denotes the idea that a gain or benefit wrongly taken or enjoyed should be returned. Braithwaite and Pettit (1994) thus argue that restitution in criminal law holds that the satisfaction of justice requires the wrongdoer to repay or return what he/she has taken from the sufferer of wrong, the idea being that through his/her actions the wrongdoer has been enriched at the expense of the victim of crime. By disgorging himself/ herself of the benefit of his/her actions and returning that which was taken from the victim, the offender or wrongdoer ‘rights’ the wrong he/she created. Restitution in this context interprets our moral intuition that “something must be done” as demanding that things be returned to the way they were before the offence occurred. The offender or wrongdoer must thus return that ‘thing’ which he/she has taken from the victim of crime.

Consequently, through its focus on returning that which was lost to the victim of crime, restitution places the actual sufferer at the centre of any attempt to do justice. According to Van Ness and Strong (2002: 16), ‘restitution has its roots in justice systems which viewed crime as an injury more to the victim than to the government’. Restorative justice shares this focus on the actual harm done by the wrongdoer's act and on the person who suffers this harm (the victim of crime). In other words, restorative justice and restitution are both outcome focused, directing their attention to the results of an action and not

some inherent nature of the action itself. However, restorative justice it could be argued does not limit its focus to victims. Restorative justice expands its focus to include the offender and the community in attempting to respond to the harm done to the victim. This expanded focus Van Ness and Strong (2002) argue is a product of the difference between restorative justice and criminal law restitution with regard to their understanding of the harm resulting from wrongdoing and in what is required to address the situation. In the context of “ordinary” restitution what justice requires is thus a material transfer between offender and victim. Van Ness and Strong (2002) noting the striking similarity between the U.K. guidelines for restitution developed several years ago and King Ethelbert's schedules for restitution developed about 1,400 years earlier argue that the Anglo-Saxon ruler King Ethelbert's idea was a conception of restitution as conceived in criminal law; King Ethelbert according to Van Ness and Strong (2002) developed elaborate schedules of restitution according to the specific harm done. For example, loss of a finger was worth so much while the loss of a nail was worth less and the loss of a foot worth much more.

The first problem with this ‘ordinal proportionality’ (McLaughlin and Muncie, 2003:250) is the assumption that it is possible to assign a set value for particular losses. It assigns an objective value for the loss of a finger and the loss of a foot that is deemed appropriate in all cases. The arbitrariness of this value assessment the researcher would argue becomes clear when one compares what the loss of a bicycle would mean to a desperate poor man in Nigeria as compared to a loss of car to a multimillionaire; or what a loss of a finger would mean for instance, to a basket ball player; or painter; or a writer as compared with a soccer or footballer.

Set values as conceived in criminal law restitution are thus necessarily arbitrary because they cannot reflect the relative value of a loss for the individual affected. Even if it were possible to devise a system to account for the various permutations and combinations of people's lives and arrive at an appropriate value for the material loss a victim experiences, McLaughlin and Muncie (2003) argue that the notion of quantification, as it is applied, still suffers problems. Because criminal law restitution requires quantification and

valuation of that which must be transferred between perpetrator and victim, it cannot account for the non-material harms a victim can and often does suffer. In fact, it is the exception not the rule when the primary loss a victim suffers is material in nature. Restitution in criminal law thus ignores the very real harm victims experience - harm to their sense of security resulting from a breach in the social relationship between victim and perpetrator as members of society. Examples of this type of harm are easy to find. Take a case where one's car is stolen and the person who took it is caught. He/She can, according to this theory, make restitution by returning the car. This does indeed make up for the material loss one suffered from the theft of the car i.e. the lost car is replaced. What it does not return however, is the feeling of security the victim had when he/she locked the car up before it was stolen. It cannot return the feeling that one is safe from being a victim. Furthermore, the simple act of returning the car fails to offer even security in the knowledge that the same individual will not take the car again, as it does not involve any consideration by the offender of the wrong and its effects.

In essence the problem here is not the notion of restitution *per se*; rather it is restitution as the ultimate aim of justice. Restitution in and of itself is not enough to address the harm a victim experiences after a wrong has been committed. If restitution is justice as understood by criminal law, should we then call it justice when the rich in Nigeria (as they often do) victimise the poor and simply say for instance "mention your worth and I will pay?" Justice in this form amounts to a 'bean counting view of justice' where all justice requires is that the scales are balanced by ensuring that each side has the beans they started with (see Llewellyn and Howse, 2002), and justice conceived of in this way according to Van Ness and Strong (2002) is backward looking in that it is oriented towards the *status quo ante*. While restitution wants to return things to the way they were before the wrong, in contrast, restorative justice does not take restoration of the *status quo ante* as its goal because if it does, it will be encouraging the demands for 'revenge' or 'pounds of flesh' which would be in contradiction of its forward-looking orientation.

Hence, Van Ness and Strong (2002) argue that the language of restoration has led some people to misunderstand the ambitions of restorative justice because the word 'restore' to

many people in common usage suggests a return to the way something was such as for instance, when one restores a historical building the aim is to re-create the previous condition of the building. This understanding of restore the authors argue has prompted some to argue that restorative justice is better called by some other name like ‘transformative’, ‘relational’ or ‘community restorative justice’ (see Morris, 1994). Others have reacted by pigeonholing restorative justice as appropriate only to situations where there has been an identifiable or specific act causing the harm. But if restorative justice is understood this way how could it for instance, address intergenerational situations and issues traditionally identified as ‘distributive injustice’ in Nigeria for example? According to this view, it would follow, that restorative justice would be but one ‘kind’ of justice appropriate only in certain circumstances rather than a theory of the general nature of justice. This is a misconception of restorative justice. Thus, restorative justice, contrary to restitution, the researcher would argue is not a slave to rectifying a wrong by restoring the *status quo ante*. Instead, restorative justice aims at restoration to an ideal. Restorative justice seeks to restore the relationships between the parties involved to an ideal state of social equality. It stands juxtaposed to the backward focus of restitution, as it attempts to address a wrong by transforming the relationship between those involved such that the same situation could not arise again.

Thus, Llewellyn and Howse (2002) argue that conscripting restitution as a ‘tool’ of restorative justice addresses the problems restitution experiences when taken as an end in itself. As a part of a restorative process, restitution the researcher would argue is no longer backward looking but rather an important and often necessary step towards establishing a better relationship between the parties in the future. Also, owing to the fact that it is part of a larger process, restitution need not concern itself with non-material and unquantifiable harms for these can be addressed through other means (e.g. an apology). In addition, as part of a restorative process, restitution should avoid the charge of arbitrary valuation of harm, as value would be determined through a process of negotiation between the parties involved. Thus, the subjective worth of a hand to a painter for instance, could be accounted for as the painter himself/herself tells or interprets the impact of the harm.

Equanomics /Equity Theory

While there are many examples (some of which were addressed above) where restitution is not restorative in any sense, there are also circumstances where a transfer of wrongfully gotten or used gains from offenders to victim can serve the purposes of restorative justice- the restoration of an ideal of equality in society so that both victim and offender can now relate to one another as free and equal citizens of that society. A very important instance is where the taking of property has itself, although only part of the wrong tangibly worsened the social (including economic) inequality between victim and offender. It is important to stress again at this point that because justice requires restoration and not restitution (as the ideal of justice in and of itself) much more may need to happen to effect restoration than simply the return of property. While it is certainly possible for restitution to play an important role in achieving restoration, this is not always the case.

For instance, a story is told of a three term New York Mayor Fiorello La Guardia. According to Lefevre Pierre (1991:19) one day he took the place of the court judge and a shivering old man was brought before him. The man was charged for taking a loaf of bread from a bakery. The accused man gave the excuse that his family was starving. 'The law allows no exceptions. I have to punish you. I have to fine you ten dollars', declared La Guardia. But then he felt his pocket and added 'Here is ten dollars' to pay the fine. And raising his voice, he continued, 'I now impose on everyone present in this courtroom a fine of fifty cents each-for living in a town where folk must steal bread in order to live- sergeant, collect the money at once and hand it over to the accused'. The hat went round and the accused man left the court with forty-seven dollars fifty cents in his pocket (see Lefevre Pierre, 1991:19).

So on the other end of the spectrum, there are cases where restitution may actually impede the goal of restoration. This relates, in part, to the recognition in restorative justice theory that, although a disturbance of the *status quo ante* can trigger distinctive needs for restoration, since what is to be restored is an ideal of equality in society as

between victim and offender, a mere return may not accomplish this goal, or could even worsen it. Take the example of the offender cited above who is very poor, who steals for economic reasons to support his family. Placing a burden of repayment on him may actually frustrate the achievement of an ideal relation of equality that (restorative) justice seeks, making it more difficult for him to achieve a new socio-economic status that allows a relationship of equal dignity, concern and respect. Thus, the old adage, which says: 'two wrongs don't make a right' holds water here. Making the offender worse off in fact moves us further away from the ideal of social equality, and, thus, further away from meeting the demands of justice. Restorative justice thus holds that such wrongs can only be addressed by restoring the relationship between offender and victim to one in which the rights of both are respected. Restoring social equality then cannot be achieved through punishment (like restitution in this case). Indeed, mandatory restitution according to this argument could actually serve to let offenders avoid responsibility for what they have done because it allows them to focus on the injustice they themselves are suffering. Take the case of Nigeria for instance, 'compensatory crimes' (robbery, burglary, and 419/fraud) is high among youths nowadays because every day they hear on the news how millions and billions of Naira are stolen by people in government in the face of high unemployment and poverty among the people.

The researcher's argument here is not to encourage the poor to steal or commit crime, or to give support to the argument that restorative justice is a 'soft option' for offenders but, where it thus occur that the socio-economic status of the victim outweighs that of the offender and the offender is by no means able to pay material compensation, it thus becomes imperative that the mediator take this argument into consideration if restorative justice is to make any meaning to the poor offender.

Recall the earlier claim that justice is a response to a powerful moral intuition that something must be done. Restorative justice claims that what is required to satisfy this moral intuition, that 'something' that must be done is the establishment or re-establishment of equality. It is important to note that this offers an explanation for how the instinct, that justice must be done, can arise even in the absence of any specific act or

omission, which disturbed the way things ought to be. If justice means equality, Llewellyn and Howse (2002) then argue that our moral intuition will be activated (or should be activated) whenever things are out of balance or unequal. However, we have seen that justice cannot be concerned with equality in the abstract. Rather, this equality needs to be a social equality. If justice is to be a human concern, then it must be focused on equality between human beings. Thus, Llewellyn and Howse (2002) argue that justice must be about ‘establishing, or re-establishing, a social equality, and not some abstract or ethereal notion of moral equality’.

Social equality then means equality in relationship. Social equality exists when relationships are such that each party has their rights to dignity, equal concern and respect satisfied. Restorative justice aims to restore relationships. As such restorative justice is inherently relational. This is a distinguishing feature of restorative justice versus the other conceptions of justice. Restorative justice recognizes that if justice is to be meaningful for human beings, if it is to have any sway on earth and not simply in the domain of theory, it must take account of who we are as human selves. It must take into account a truth about human beings that has been obscured by the extremes of individualism and collectivism inherent in some cultures. Through the work of some insightful feminists such as (Koggel, 1998; Kay Harris, 1987) who have rejected these extremes, the truth that human selves are inherently relational has been put in evidence. According to Koggel (1998:10) ‘selves exist in and through and/or are constituted by relationships with other selves’. This is not to deny that we are individuated selves but rather to locate the individual within relationships, because according to Koggel (1998:10) ‘the extreme of collectivism on one hand separates the individual and other by subordinating; the extreme of individualism on the other also separates, placing the individual above the other’. Indeed, just as we are never wholly independent of other selves, we are not wholly dependent either- we are interdependent. Justice, then, as Koggel argues is concerned with human selves and must start with a focus on relationship. Taking relationships as the starting point for justice reasoning therefore transforms the traditional picture of justice (see the *ubuntu* philosophy of justice for instance). This starting point according to Koggel (1998) generates a radically different picture from the more familiar abstract rule and principal

image of justice embodied in retributive theory, as this conception according to her is founded on the individualist conception of the self and human agency.

How then would taking relationships and human connectedness as the starting point for thinking about the requirements of justice make a difference? The answer according to Llewellyn and Howse (2002:27) is simple-‘Justice should be concerned about creating or protecting human relationship’. In other words, the authors argue that ‘justice must take connection as its goal over alienation and separation’. To achieve this goal, justice must be ‘contextual not an abstract set of rules and principles applicable to each and every situation’. They further argue that in order to create, promote, and protect relationships, justice should inquire into the details of such relationships and assess whether they are ‘right’ relationships in the sense discussed above (i.e. relationships of dignity and equal concern and respect). If the relationships are not ones of equality, the authors argue that justice must identify what is necessary to restore them to this ideal. The theory of justice that emerges here is a restorative one and it stands in stark contrast to theories of justice arising out of an individualistic starting point. Thus, the researcher would argue that restorative justice looks promising for dealing with longstanding issues of oppression, inequality and disparity in most communities of the world.

The relational nature of restorative justice clarifies the earlier answer to the often-asked question: restore to what? Now that we understand restorative justice is about restoring *relationships* it is obvious how restoration cannot mean returning things to the *status quo ante*, to their state immediately before the wrong. For wrongdoing is often not only the cause of but also results from previously existing inequality. Thus, restoring a situation to the way it was before the wrong will, in most cases, fail to address the problems in the relationship which permitted or perpetuated the abuse in the first instance. Rather, in order to address the wrong and ensure that it does not happen again, one must address the state of the relationship in which the wrong occurred and strive to establish an ideal state of equality hence, Aguba (2005:4) quoting the words of Socrates noted that *Fundamentum Omnius Cultus Animae* (i.e. the soul of all improvement is the improvement of the soul).

It is important to be reminded that the researcher does not mean to suggest that this ideal will be achieved the same way in each relationship. So context is vital in any attempt at restoration. It is imperative in a restorative approach that the question of what will restore a relationship to one of equal dignity, concern and respect is asked in the context of a specific relationship (the contingency model). The question then is not what will restore relationships generally but what will it take to restore this relationship between these parties in this context. However, the values at which restoration is aimed remain the same for each situation. Relationships of equality are ones in which each of the parties to the relationship enjoys dignity and treats one another with equal concern and respect.

Restorative Justice as a ‘Healing Justice’

Closely related to the other theoretical propositions mentioned above is what the researcher might call the “cathartic energy” or the “healing power” of restorative justice. In the researcher’s opinion, restorative justice is one significant area where the “principle of catharsis” manifests its relevance in the healing of victimisation.

When an offender attacks his/her victim, the mindset of the offender is to disgrace or ridicule the victim (for instance, in a case of rape where *mens rea* is established). When the offender is caught and brought to face justice in Restorative Conferencing for instance, the negative energy (disgrace/ridicule) earlier put on the victim on the course of victimisation is at this time transferred to the offender. This transfer of negative energy could be likened to Isaac Newton’s second law of thermodynamics, which postulated that “energy (negative/positive) is never lost but merely transferred from one source to another”. In this context, the negative energy (shame/disgrace) that has been inflicted upon the victim by the offender at the point of victimisation could be transferred back to the offender when he/she comes face to face with the victim in a restorative justice meeting. Such a restorative justice meeting provides the victim an opportunity to ‘ventilate’ his/her emotion by asking questions. Answers to such questions by the offender could go a long way in helping the victim recover from his/her emotional stress. The victim then could be psychologically healed of his/her victimisation while the

offender takes up the 'burden of guilt', which would never heal until he recompenses the victim or receives forgiveness.

For instance, a victim of violent rape attests to the significance of this theoretical proposition after meeting the offender when she says that: 'the power and control that was taken from me twenty four years ago have been returned by the man who stole them. We are happy to be part of this programme [VOM] because as the mediator told me the first day that we met, "once a person has been be a victim of violent crime, the offender and the victim are always connected"', because that person changed your life forever' (PFI, 2006:1).

In the legalistic court proceedings these cathartic opportunities are never there, and the offender never faces this "burden of guilt" because the legal battles have been taken over by both the defending and the prosecuting lawyers. Where the offender is found guilty of his crime, he/she rationalizes his conviction by blaming the defence lawyer for poor professional performance. Restorative justice holds the offender culpable in this case; hence Braithwaite (1989), Umbreit et al (2001) and Zehr (1985) all argue that restorative justice is no simple option of justice for offenders.

As a support to the above theoretical proposition, Takahashi (2005) argues that it seems that an apology from an offender facilitates the recovery from psychological harm caused by the crime because as humans, we believe and expect other members of society to treat us in accordance with our own moral values. Therefore when offenders cause harm, victims feel great indignation towards the offenders because the offending behaviour conveys a message that the victims are not valuable enough to be treated honourably. Offenders therefore put victims in a lower status, undermining their values and damaging their self-esteem. Hence Higgins' (1987) theory of Self argues that since each person has a mental representations of the Self and Others, a discrepancy in these expectation of representations (such as for instance, being treated with indignity) create emotional aversion to future social relations. Such moral injury, it is argued causes moral hatred. And if one vengefully hates an offender, his/her emotional response could be anger until

he/she receives genuine apology and give forgiveness where necessary.

Hence it could be argued that while an apology from the offender heals the victims, it is also akin to ritual shaming or humiliation of the offender: the language of which is often that of “begging for forgiveness”. Apologies from offenders therefore improve victims’ status, so that forgiveness and healing are more likely to occur. Advocates of retributive justice argue that punishment should be proportional to the offence committed but it seems from the foregoing analyses that the victim’s tarnished image /stigma and emotion due to criminal victimization could be more effectively repaired by acceptance of guilt, apology, forgiveness and healing in restorative justice than retributive vengeance. Although an apology cannot undo what has been done, it is however, helpful in certain cases in the process for victims to overcome their emotional injury.

Restorative justice as ‘Religious Justice’

The prominence of faith-based ideas has also been attributed to the emerging restorative justice paradigm. This philosophical proposition argues that restorative justice holds a powerful spiritual relevance in all major world religions. For instance, McLaughlin *et al* (2003) note that the Christian injunctions to repentance, forgiveness, ‘hating the sin and not the sinner’, ‘doing unto others what you would wish others do unto you’, are all present in the faith based restorative justice advocacy. The restorative justice principles of reconciliation, restoration and healing McLaughlin *et al* then argue are evident in all religions, but particularly strong in the Christian faith.

As a support to this assertion, a search of the Gospel of Saint Mathew chapter 5:25 encourages reconciliation and out of court settlement between victim and offender to avoid imprisonment. Similarly chapter 18, verses 15-17 of Mathew gospel recorded that:

If your brother does something wrong go and have it out with him alone between your two selves [a semblance of victim-offender reconciliation]. If he listens, you have won back your brother. If he does not listen, take one or two others along with you [a semblance of Family Group Conferencing]....But if he refuses to listen to these, report it to the church [a semblance of community justice]; and if he refuses to

listen to the church then treat him like a tax collector [a criminal](see Mathew 18: 15-17 RSV).

In the same vein, the researcher would argue that Islam too encourages dispute resolution, reconciliation, negotiation, compensation, and peacemaking criminology. The Qur'an injunction to Islamic victims of crime states thus: 'and those who, when an oppressive wrong is done to them [victims of crime], take revenge...The recompense for an evil is evil like thereof, but whoever forgives and makes reconciliation, his reward is with Allah (Qur'an 42: 40 English Translation Version 1413H).

From the above gospel injunctions, the researcher is arguing that it is clear that punishment as in the criminal justice system ought to be seen as the *ultimum remedium* (last resort). No doubt then that the influence of religion (Christianity especially) could be found in the works of authors such as Consedine (1999), Zehr (1985), Wright (1996) and many other restorative justice movement writers. The same reason could be why the Catholic University of Leuven, Belgium; the Eastern Mennonite University in Virginia, and Fresno Pacific University, USA spends so much to finance research and outreach programmes in restorative justice (see McLaughlin *et al* 2003). Hence, Braithwaite (1989), and Consedine (1999:146) both argue that 'Biblical justice' was restorative.

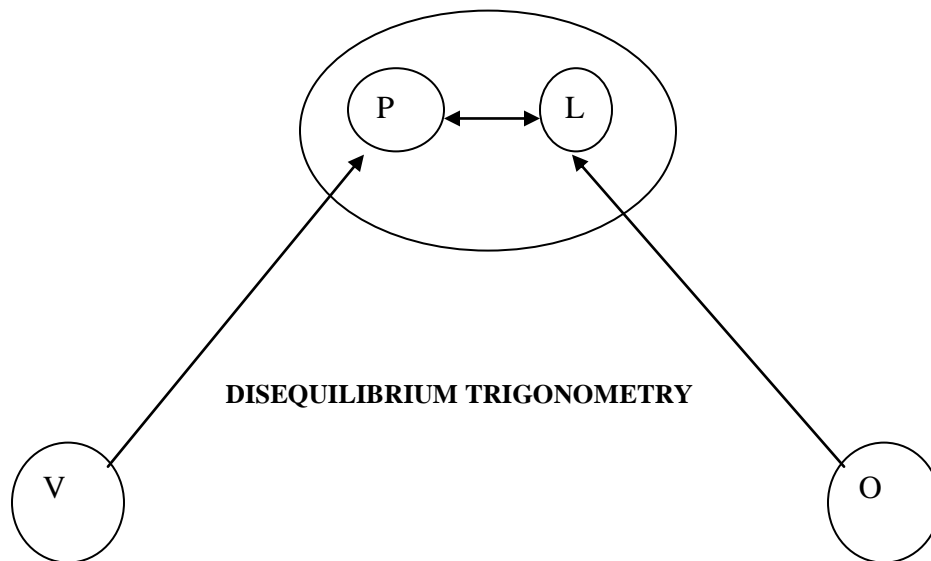
De-commodification of crime and conflict

Christie's (1977) widely cited seminal paper 'conflicts as property' did not only advocate for victims' participation in the criminal justice system but also exposed what the researcher would call the "mercentilisation" of crime in the criminal justice system by those Christie calls the 'professional thieves.' From the point of view of corruption in most criminal justice systems of the world including Nigeria for instance, the researcher is arguing that restorative justice would not only restore or balance the rights of both the victims and the offenders but could also help 'cleanse up' the corrupt criminal justice system.

In the Nigerian criminal prosecutorial trial for instance, crime and conflict are often

“commodified” by some corrupt ‘professionals’ and “deals” are often negotiated between the ‘investigating police officer’ (IPO) investigating the case of an accused person/as well as representing the ‘state’ on behalf of the victim of crime, and the lawyer representing the offender (see for instance, Ojo-Lanre, 1995). In this form of criminal procedure, “closed deals” are most often “sealed”. An out of court settlement on behalf of the victim/state, and the offender by the IPO, and the lawyer to their own selfish interest leaving out both the victim and the offender does occur. In this form of corrupt criminal justice practice, there exists a triangular relationship in what the researcher would call a “cell of triangular disequilibrium” (see the disequilibrium trigonometry scale below specifically designed by the researcher for the purpose of this theoretical argument).

Fig.2.1 Trigonometry of court representation in Nigeria



Where:

The bigger circle is the corrupt criminal justice system.

P is the investigation police officer/ prosecutor

L is the lawyer representing the (accused) offender

V is the victim of crime

O is the offender/ accused person.

This schematic trigonometry shows the victim and offender (owners) of the ‘commodity’ (conflict) standing powerless and at equidistance with no communication between them. The only communication that exists here is the mono-directional (one-way) communication between the victim and the IPO (prosecutor) on one side, and the offender (accused) and the lawyer on the other. The fate of the victim, and offender is decided in the closed and corrupt circle above where the ‘professionals’ (prosecutor and the lawyer) settle out of court deals without the active participation of the victim and the offender.

In this hypothetical theorem, the ‘professionals’ often use fears to persuade the victim and/or the offender to accept whatever outcomes the ‘professionals’ might have reached. To the offenders, fears are often instilled in them to give out large sum of money for an out of court settlement because they risks going to prison. To the victim, he/she could be persuaded by the prosecutor to accept meagre sum of money because he/she risks losing the case for lack of ‘substantive evidence’. In this theorem, the offender sometimes bears most of the financial burden, as he/she has to pay the lawyer’s legal fees as well as pay the “prosecutor-lawyer arranged compensation”. On the part of the victim, what the prosecutor gives to him/her is what she/he gets since s/he was not privy to what transpired between the prosecutor and the lawyer behind closed doors in the corrupt “negotiation cell” or circle above. The above theorem is a typical characteristic of some corrupt courts in Nigeria, which are derogatorily referred to as “*Jankara*” or “*ochanja*” courts.

Christie (1977) acknowledges this theoretical argument when he notes that ‘authorities (in this case the prosecutor) have in times past shown considerable willingness, in representing the victim, to act as receivers of the money or other property from the offender, and lawyers are particularly good at stealing conflicts’. He recounts a personal experience when he says that:

Many among us have, as laymen, experienced the sad moments of truth when our lawyers tell us that our best arguments in our fight against our neighbour are without any legal relevance whatsoever and that we

ought to keep quiet about them in court. Instead, they pick out arguments we might find irrelevant or even wrong to use (Christie, 1977 reprinted in McLaughlin *et al*, 2003:23).

Where such experience as recounted by Christie occurs, there are high probabilities that victim and offender's conflict might have been traded off. Perhaps, it is in view of this unscrupulous benefits from this trade, that any mention of the acronym 'ADR' (Alternative Dispute Resolution) to some money-focused lawyers in Nigeria is received with aversion because to them, it represents an "Alarming Drop in Revenue" (ADR). However, it could be argued that in some jurisdictions the experiences recounted by Christie (1977) above are not an example of judicial corruption, but rather an example of conflicting paradigms, with the law as a closed system unwilling to discuss issues in terms other than its own. However, the positive responses by the criminal justice professionals in Nigeria that participated in this study towards restorative justice seek to clear this mystery hence; Daly (2004) argues that restorative justice has potentials to 'transform' the criminal justice system.

Restorative Justice: Methods and Practice

Following the theoretical discourse on restorative justice above, there are a number of standardised and innovative programmes currently being implemented around the world designed to address the needs of crime victims, offenders, their respective families and other community members who are affected by criminal offending. Similarly, in Nigeria, there are some cultural and indigenous restorative practices that could be adapted or adopted to suit modern conflict resolution mechanisms if properly studied and researched. These processes are designed to intervene in the context of the community in which the offending behaviour has taken place rather than in the formal and traditionally intimidating atmosphere of the courtroom. The review of the Nigerian indigenous practices in this section is to see how they could be mainstreamed into the 'standard practice models' grouped into four main categories-circles, panels, conferences and victim-offender mediations below. This understanding might be imperative because Keenan (2005) argues that there are no strict models of restorative justice, because restorative justice could be customised to suit the indigenous and cultural orientation of

the participants. For this reason, the researcher discussed the ‘standardised’ restorative justice models below and gave instances of some Nigerian cultural restorative practices that could be improved as complementary to the international models such as Family Group Conferencing, Circles and panels for instance. Although the categories of restorative justice models discussed below, while usually presented as distinct are somewhat artificial in that their structure and practices often overlap or are quite similar. The models therefore complement one another and should not automatically be seen as mutually exclusive. They include:

Victim-Offender Mediation

The victim-offender mediation practice model was reported by Umbreit *et al* (2001) to be the forerunner of all the Western restorative justice practice models. According to Peachy (2003), the initial ideas and innovations of victim-offender mediation were attributed to a probation officer (Yantzi) who got involved in a case of vandalism against two intoxicated teenagers in a town called ‘*Elmira*’, a few miles north of Kitchener, Ontario, Canada.

Victim- offender mediation practice according to Schiff (2003) is designed to bring victims and offenders together face-to-face in safe, structured, facilitated dialogue that typically occurs in a community-based setting. Before this meeting, it is suggested by Umbreit *et al* (2001) that a separate pre-conference meeting with both the victim and the offender to explain and assess the individual’s readiness for the process, and to assist the victim in communicating the physical, emotional and financial impact of the crime to the offender should be conducted by a trained mediator or facilitator. In addition, Umbreit noted that the meeting should enable the offender to take responsibility for his/her offending behaviour, and the victim to receive answers from the offender about ‘why’ and ‘how’ the crime occurred. Following this sharing of stories, it is argued, the victim and the offender would together determine an appropriate plan to repair the harm to the victim, which may include material and/or non-material compensation.

An initiative to this model that began to be tested in England and Wales among adults and youths in prisons is what the Youth Justice Board (2002) calls the 'Victim-Offender Group'. The victim-offender group is a model whereby several victims and offenders who have either been affected by, or committed, the same type of offence are brought together in a mediation process. For instance, a number of victims of residential burglary might meet with a similar number of offenders who had committed residential burglary but not really their 'own' offenders. It was suggested by the Board that this might be a useful way of involving victims who seem likely to benefit from a restorative process when 'their' offender has either not been apprehended or is considered totally unsuited to a restorative process.

On the effectiveness of the Victim-Offender mediation practice model, emerging research from the United States, Canada and Europe (see empirical review) has shown that both victims and offenders who participated are more likely to be satisfied with both the process and the outcome when compared to the traditional court processes. Umbreit (1998) and Schiff (2003) also report that victims who met their offenders in the mediation process were less likely to fear re-victimisation and more likely to receive restitution. Schiff (2003) however, indicates that some victims would initially be fearful of meeting their offenders in person. Schiff (2003) also reports that offenders who completed victim-offender mediation programmes were more likely to complete their restitution obligation and less likely to re-offend compared to offenders who went through the traditional courts proceedings. Miers (2001) argues that among those offenders who did re-offend, their subsequent offending would likely be less severe than those who did not participate in victim-offender mediation. Schiff (2003:319) (supporting the empirical evidence presented in chapter three of this thesis) concludes that 'research on Victim-offender mediation has typically shown more positive outcomes on a number of dimensions when compared to offenders processed through traditional mechanism; where positive outcomes have not been found, and the research has generally shown outcomes not worse than those experienced by court processed offenders'.

Family Group Conferencing

The most popular model of restorative conferencing commonly cited in literature is Family Group Conferencing. According to Morris and Maxwell (2003), Family Group Conferencing is based on ancient practices originated by the Maori tradition of New Zealanders. In Nigeria a similar tradition can be found in the use of the *ummunas* (the use of family members who share lineage in dispute resolution) among the Igbo who often do not believe in top- bottom involvement in family disputes (see Elechi, 2006 for instance). Daly (2001) however argues that the present day practice and applications of Family Group Conferencing often differ from the traditional methods. The modernised Family Group Conferencing was adopted by the New Zealand national government in 1989 for the handling of youth offenders, making New Zealand the first country in the world to officially adopt restorative justice in the dispensation of youth offending (see Schiff, 2003). Presently in New Zealand, Family Group Conferences are used for all medium-serious and serious offending by young people except ‘murder and manslaughter’, and operate both as an alternative to courts for young people who have not been charged in the Youth Courts, and as a mechanism for making Pre-Sentence Reports (PSR) or recommendations to judges (see Morris and Maxwell, 2003 for instance). In family group conferencing, Schiff (2003) notes that meetings typically occur following separate face-to-face meetings with the victim and the offender, which may include members of their respective families and any supporters, or significant others the key parties might wish to have present. The conference enables the parties to share their stories, identify the impacts of the crime on those present, and to collectively determine an appropriate resolution.

However, in the United States many practitioners are trained in the methods following the Australian Wagga-Wagga model. The model uses a script and encourages the offender to speak first by recounting the incident. The victim then speaks next and describes the impact of the event in their lives, followed by other participants present. In some cases, however, the victim might begin speaking first, or both victim and offender might be offered the choice of who would like to speak first (Schiff, 2003) Morris and Maxwell

(2003) and Schiff (2003) argue that the object of the family group conference is to enable the offender to see the impact of his or her actions on the victim(s) and others, and to allow the victim to ask questions, express feelings and talk about the incident. Following discussion of the impacts, the victim might be asked to identify his or her desired outcome (which in some programmes victims would have already been asked to begin thinking about in the pre-conference meetings) and then be invited to participate in shaping a reparative agreement.

Wright (1996) however fears that the rights of the offender might be infringed in this form of practice (victim empowerment). Morris and Maxwell (2003) also notes that at some point in New Zealand family conferences, the family and the young person are given the opportunity to discuss privately how they think the offending should be dealt with. The conference would reconvene and all the participants in the family group conference would then contribute to the final discussions, the reparation plan, the agreement and amendments, and the decisions about the eventual outcome would unanimously be reached. Conferences are complete when the agreement is signed by all present; refreshments are then served, allowing time for more casual conversation and connection.

Empirical studies conducted in New Zealand by Morris and Maxwell (1993, 1998, and 2001) and reported by Schiff (2003) suggest that youth offenders who participated in Family Group Conferences are more frequently and actively involved in the justice process than are offenders who do not, and participants' satisfaction rates are generally higher than for court-processed youth and their victims. Schiff also reported that in the United States, high levels of participants' satisfaction as well as offender compliance with agreements were evident. Commenting on preliminary results from Australia Schiff (2003) reports that recidivism rates decreased for violent offenders, and young offenders who participated in conferences were more likely to say they would obey the law in the future than those who went through the court system and victims also reported feeling better served by the conference process compared to court proceedings. Schiff (2003) also argues that the decrease in juvenile imprisonment in New Zealand has been

anecdotally attributed to the increase use of Family Group Conferencing in the country

Circles

This model of restorative justice practice according to Robert and Roach (2003) originated from the Canadian Aboriginal [First Nations] justice tradition. This practice model is sometimes referred to as 'Sentencing Circles', 'Peacemaking Circles' and 'Community Circles' with a slightly different purpose and process but with similar objectives. Similar examples of this model in Nigeria according to Omale (2005:51) are the, "*Ekpo*" and "*Ekpe*" cults system of dispute resolution amongst the Akwa-Ibom and the Igbo cultures respectively where the people sit together in circles at the village square to mediate between the parties to a crime, and a healing sacrifice/ceremony is performed to resolve the conflict and forestall further resentment among parties. Circles carry particular spiritual significance for many indigenous people. One significant example of circles identified by Robert and Roach (2003:241) is the 'Community Holistic Circle Healing Project in Hollow Water', an Aboriginal community in Manitoba, Canada. The programme involves an assessment team that operates a series of healing circles for offenders who admit guilt, victims of sexual abuse and for families of both offenders and victims. Robert and Roach (2003), and Schiff (2003) all agree that the circles process is more complicated and time consuming than other restorative models. These processes according to them might involve up to 'five distinct stages' and are 'labour intensive' and would demand a considerable amount of commitment to the process by participants. They explained that in the first circle, the offenders discuss the offence with the assessment team, or as a response to an offender's request to participate in the circle. In the second circle, victims tell offenders how the offending behaviour has affected their life (it is a healing circle for the victims). In the third circle, the large community is involved (it is a healing circle for the offenders). The fourth circle is a sentencing circle to develop consensus on what happened and what should be done to repair the harm; this may involve a much larger number of community members. Finally, a series of follow-up circles to monitor compliance with agreement and to support the offender in completing the agreement are held repeatedly with healing ceremonies at 'every six-month interval'.

Panels

This model of restorative justice practice has been called several names such as: Citizen Panels, Neighbourhood Boards, diversion board, youth panels, reparative board, and or community boards. Schiff (2003) claimed that this practice model has existed in the United States for over a century now. Omale (2005:52) also claims that similar examples of this restorative justice traditions in Nigeria are the use of the, “*Ndi-nze*” (committee of red cap chiefs), the “*Ama-ala*” (the nobles of the land) amongst the Igbo, the “*Ba’ale*” amongst the Yoruba, the “*Mai-ungwa*” amongst the Hausas, and the “*Madakis*”/ “*Gangos*” (the ‘eyes’ of the community) amongst the Igalla tribe in conflict resolution respectively. This model according to Kurki (2003) and Schiff (2003) is mainly composed of a small group of citizens who come together to determine what should happen primarily in non-violent and property offending but in the Nigeria example, it could be used for serious crimes provided it is in the interest of the parties and the community concerned. Panel members meet face-to-face with offenders to discuss the nature of the offence, its implications and the appropriate reparative action to be taken, and if the victims are absent they might be consulted for input prior to the panel meeting or a delegation or representatives of the victims might be consulted if present. Panel members typically determine the reparative outcomes but might involve the offender to generate conditions of agreement and the time frame for completion. The panel members also monitor the completion of the agreement and might report same to the court, police, or other statutory body to indicate the conclusion of the matter (if the matter was withdrawn from court or the police in the Nigeria case for example). The essence of this is to promote the involvement and ownership of the citizens in the justice process, and to offer the community and offender to come together and deal with the offending behaviour constructively.

All the above four methods of restorative justice if conducted effectively are democratic means of conflict/dispute resolution. As we can see in the subsequent chapter, all of these models may be used as alternatives to, in conjunction with, and/or in addition to court proceedings. The focus is to address the causes and consequences and to find a

satisfactory resolution to the dispute in question through consensus decision-making. However, the most important difference of these methods of practice according to Barton (2002) is in the number of participants that are involved in the restorative process and the type of facilitation structure employed. While Victim-offender mediation for instance, takes place mostly between individuals, Family Group Conferencing is mostly between the communities of support and care of the respective principal disputants. Similarly, circles involve a larger body of participants than merely the principal parties to the dispute, and Circles tend to involve more rituals and the flow of communication is typically controlled by what Barton (2003:5) calls 'the talking piece'. So wider group participation tends to make a major difference to the dynamics of the dispute resolution and restorative process, as does the quality of the negotiation and skills of the facilitator.

From the foregoing, one might be tempted to draw a distinction between victim-offender mediation and the other group processes that mediation deals with civil and minor dispute, whereas the other methods deal with criminal and severe cases. This distinction however, is not conclusive because as the empirical and victimological evidence in chapter three shows, all the methods infiltrate each other. In some jurisdictions, victim-offender mediation is commonplace in criminal justice disposal, and the other methods have similarly been used to deal with minor and civil cases. And whether one or the other of these restorative justice methods is better than the others, the truth of the matter is that all of them have their own suitable contexts as could be seen in chapter three. For instance, Victim-Offender mediation is cost and time-effective and a proven dispute resolution technique (see Barton, 2003). Also, there are many contexts and cases where it is the most appropriate method, such as when the dispute can be easily resolved without the involvement of supporters, and where one or both disputants feel that they wish to meet each other without the involvement of other people from either side (see empirical evidence in chapter three for instance). And conferencing, circles and panels on their own, are more appropriate and reliable in violent, tension filled and complex cases, where there is still anger, fear, and pain, where there is a high probability of re-offending, where the sincerity of either party in the dispute is in doubt, and where victimisation or re-victimisation are serious possibilities. Examples of such cases according to Barton (2003)

are where offenders are ‘severely disengaged’, are ‘remorseless and contemptuous’ towards their victims, are inclined to play ‘mind games’, or are unscrupulous in driving ‘hard bargains’ and /or ‘negotiate in bad faith’. In such cases, there is very little the mediator alone can do, and victim-offender mediation would be foolish to consider. This review is imperative for potential Mediators/facilitators in Nigeria because they need to appreciate that in certain context the willing contributions of a strong group of participants to maintain equilibrium and give dominance to the voices of reason throughout the facilitation process is necessary because the power of group participants is manifested in messy cases as disputants are less likely to indulge themselves and make themselves contemptible in the presence of the most respected and important people in their own lives in the community. Examples of some successes of effective restorative justice practice models are therefore presented in the subsequent section for the benefit of any anticipated restorative justice projects in Nigeria.

CHAPTER 3

EMPIRICAL AND VICTIMOLOGICAL EVIDENCE

Following the review of the theoretical and philosophical discourse, and models of restorative justice above, this section of the thesis looks at empirical and victimological evidence on the involvement of victims of crime, and their expectations and satisfaction in restorative justice approaches around the world. This section considers empirical works that has been done in the field of restorative justice and victimology to assess the suitability of restorative justice for victims of crime in Nigeria, and to learn where further works need to be done. A review of opinions of criminal justice professionals in South Africa and other jurisdictions, in relation to restorative justice acceptability has also been considered because of their relevance to this study.

Victims' participation in restorative justice programmes has been generating a considerable debate among both academics and professionals globally about whether restorative justice offers victims a better deal than the conventional criminal justice system. This ideological debate is of interest in this study for Nigeria, and to the advancement of restorative justice in particular because the success of any restorative justice initiative hinges on the willingness of the victims of crime to cooperate in the tripartite arrangement of: victim, offender and the community. So this section of the thesis considers victims' participation, perceptions, needs, and experiences in restorative justice projects in global and broader perspectives because as victim protection and support advocacy began to gain ground around the world, the restorative justice approach emerged as a new concept to tackle problems, which it claimed the criminal justice system was failing to address. The restorative justice approach argues that it considers the loss caused by crime through the active participation of the victim, offender and the community.

Thus, advocates of restorative justice such as Fattah (1997) and Weitekamp (2001) for instance, both argue that restorative justice which focuses on reparation of harm suffered

by the victim is undoubtedly better equipped to respond to the needs of victims of crime than the contemporary criminal justice system. Roach (1999) also argues that the failure of any criminal justice system, and victims' advocates to embrace restorative justice should be regarded as a disservice to victims. However, some victims' rights advocates (see Reeves, 1989) are wary of the possibility that restorative justice programmes are insensitive to the needs of victims of crime, and that restorative justice will place an additional burden on victims of crime. 'Who is right?' say Wemmers and Cyr (2003).

Do victims of crime want to participate in restorative justice, and if so, how? What are their needs and expectations? In this section of the thesis, the researcher provides a comprehensive overview of victims' views and concerns, based on an examination of existing evidence. The researcher does this by first considering the perceptions of restorative justice by victims of crime in general noting the variables of interest to them. He then reviews their expectations and experiences from actual participation in different restorative justice projects around the world to compare to those of the victims of crime in this study who are yet to experience restorative justice in practice. And given the fact that the length of time between an offence and the offer of any restorative justice meeting is of critical importance to victims of crime, the researcher also take note of victims' experiences and expectations in pre-sentencing, sentencing and post-sentencing restorative justice projects in a global perspective with a view to comparing those to any anticipated restorative justice project in Nigeria. The evidence and application of restorative justice to victims of 'serious', or 'violent' crimes is also reviewed in view of the debate that restorative justice is not suitable for all kinds of crime (an opinion that is also investigated by this study in Nigeria).

So in view of the debates on the effectiveness, and the need for victims' participation in restorative justice projects, there have been numerous evaluations of restorative justice programmes in New Zealand, Australia, the United Kingdom, Europe, Canada and America. To date, a number of these evaluations that examined the issue of restorative justice as it affect the victims, offenders and the community tend to show that they are satisfied following their involvement in restorative justice programmes. Some success

stories are presented below.

Effective Restorative Justice Projects

In an empirical study conducted in Germany under the *Täter-Opfer-Ausgleich* (TOA) programme [the German model of Victim Offender Reconciliation Programme-VORP], Netzig and Trenczek (1996) found that victims' and offenders' expectations and motivation were quite high. They report that the desire to settle the case out of court and the fear of negative alternatives play significant roles on both the victims and offenders. Other European studies conducted by Luke and Lind (2002) tend to a consensus that offending rates are no worse for restorative justice compared to court and there is some evidence of lower re-offending rates for restorative justice participants.

Meta-analyses conducted by Luke and Lind (2002) in both Canada and the United States support some reduction in recidivism for restorative justice participants compared to those appearing in conventional courts. A survey of citizens in Manitoba and Alberta conducted by Galaway (1994) found strong support for spending more money on education and rehabilitation of offenders, rather than building prisons, and for restitution rather than imprisonment for a home burglary. Lee (1996) also reports that Canadians appear to favour alternatives to imprisonment, such as probation, restitution, community service and fines rather than spending money on building more prisons for offenders. More so, when the public in Canada were asked about the most appropriate sentence for breaking and entering, Lee (1996) notes that there is support for offenders undertaking work which is beneficial to the community or the victim, or for offenders.

In the United States of America, research has shown support for the use of restorative justice. Schiff (2003) reports that evidence in the Vermont Reparative Board suggests that the recidivism rate might be slightly lower for offenders who participated in Restorative Panels than the court process. Schiff further argues that young offenders feel more likely to obey the law following a panel meeting than after court, and to have increased respect for the police and the justice system process. Kurki (2003:305) also reports that participating offenders in Restorative Panels tend to passively accept the

terms of agreement suggested by panel members, since they recognise that ‘any disagreement might be seen as uncooperative’, and ‘it is generally in their interest to be polite and agree with panel members at every turn’. Reporting the result of a survey sample of Ohio residents conducted by Knowles (1984) Lee (1996) notes that residents indicated support for victim compensation and restitution as alternatives to imprisonment for juvenile offenders. Similarly, citing the work of Doble and Klein in Alabama in 1989 Lee (1996) reported that restitution is acceptable to the public, particularly when it is combined with probation supervision. In a North Carolina survey conducted by Hickman-Maslin Research in 1986 Lee (1996) notes that the proposition that non-violent offenders should work to earn money to pay restitution to their victims instead of going to prison was strongly endorsed by respondents in the study. Similarly, a study using focus group discussion in ten locations in America conducted by Doble (1987) found that respondents favoured the use of restorative justice as alternatives to prison, and support was increased after respondents were informed about how much government spend to maintain prisons and prisoners; however, respondents did not see restorative justice as a better alternative for violent or repeat offenders, or for drug dealers (see Lee, 1996).

In Britain, support for restorative justice is also evident. However, Braithwaite (2003:322) notes that earlier victim-offender mediation programmes in Britain were reported as ‘sham reparation’ because they were based on ‘tokenism’ and ‘dictated letters of apology’ rather than actual repair. Dignan’s (1992) survey, cited from Braithwaite (2003:322) however, indicated that 71 percent of English corporate victims and 61 percent of individual victims in the study reported satisfaction in the adult offender reparation programmes surveyed. Similarly, research evidence on victims’ satisfaction from intensive pilot evaluation of the youth offender panel in England has been documented by Crawford and Newburn (2003). Although Crawford and Newburn (2003:185) report that the initial attendance rate of victims in the English youth offender panel meeting (where there are identifiable victims) was put at 13%, the minority of victims who chose to attend were motivated. According to the authors, 85% of the victims expressed the desire tell the offender directly their feelings, 71% want to have a say in how the problem was resolved, 60% out of curiosity; 54% want to help the

offender; 50% wanted compensation, and 35% respectively attended 'out of a sense of duty' and to ensure that the penalty 'was proportionate to the offence'. Crawford and Newburn (2003:208) thus conclude that those who attended the English youth offender panels rated their experiences highly positive with regard to 'procedural justice', and 30% felt that the experience had helped them to put the whole victimisation behind them. The Restorative Justice Consortium (2002) also reports that in the 1991 Northamptonshire study of victims taking part in restorative justice projects, 90% wanted to tell their offender the impact the crime had on them, 80% wanted to receive answers about what happened, 73% wanted an apology and 65% wanted to negotiate actions that could amend the harm. On compensation and restitution, the study found that only 3% of compensation, which offenders agreed to pay, had to be written off.

Young (2003:408) in his survey of restorative cautioning projects at the Thames Valley reports that participants interviewed 'saw the restorative cautioning process as fair'. He however, noted that 'this finding of general satisfaction regarding procedural fairness should nonetheless be interpreted in a circumspect manner'. He advised that 'cases in which the police feature as victims need to be handled with particular care' because of what he called 'defensive solidarity'. Lee (1996) reporting the work of Hough and Mayhew (1985) notes that results from the 1984 British Crime Survey indicated that most people approved of making some non-violent offenders pay compensation to their victims, and doing community service instead of going to prison. Wright (1989) reports that in a 1986 public opinion survey in Britain, three-quarters of respondents favoured more convicted adult offenders being made to perform community service as an alternative to imprisonment. Latimer and Kleinknecht, (2000) citing the work of Umbreit, Warner, Kalanj, and Lipkin (1996) in a study conducted at two mediation programme sites in Britain report that the mediated group of offenders were more likely to be satisfied by the criminal justice system (79% vs. 55%) and perceive the system as being fair (89% vs. 56%) compared to non-mediated offenders. Subsequently, Williams (2005) notes that experimental restorative justice projects are appearing in a number of European countries in response to encouragement from the EU and European practitioner organisations.

In Australia, the Re-Integrative Shaming Experiments (RISE) evaluation in Canberra conducted by Daly and Hayes (2001:5) found that offenders reported greater procedural justice [defined as being treated fairly and with respect] in conferences than in court; offenders reported higher levels of restorative justice [defined as the opportunity to repair the harm they had caused] in conferences than in court; and offenders' respect for the police and law was higher in conferences than in court. Daly and Hayes (2001) also found that victims' sense of "restoration" was higher for those who went to conferences rather than to court. Daly and Hayes' (2001:5) South Australian research also found that conferences received 'high marks' by police, coordinators, victims, and offenders on measures of procedural justice, including being treated fairly and with respect, and having a voice in the process. However, they reported that there appeared to be limits on offenders' interests in repairing the harm and on victims' capacities to see offenders in a positive light. Strang, Barnes, Braithwaite and Sherman (1998) also found evidence, which indicates that victims and offenders in the Re-integrative Shaming Experiment in Canberra, Australia found restorative programmes to be fairer than going through the court system. They reported that seventy-two percent of offenders who were part of the conferencing process compared to 54% of offenders who went through the court system felt that the outcome of the process was fair. Braithwaite (2003) however, reports that in Australian studies conducted by Daly (1996), Strang and Sherman (1997), a significant minority of victims felt worse after the conference because they were either upset over something said, or victimized by disrespect, but concluded that these groups were nonetheless outnumbered by victims who felt healed as a result of the conference.

In New Zealand, Morris and Maxwell (2003) report that in their 1999 study on Family Group Conferencing, 84% of offenders were satisfied with the outcome of the Family Group Conference. They however argued that the high level of satisfaction might have resulted from relief that the offenders did not receive a harsher penalty. Leibrich (1996:283) in her work 'the role of shame in going straight' where she studied 48 men and women from various ethnic backgrounds in New Zealand also found that 'shame and re-integration' was a significant feature in the offenders' decisions to go 'straight'. It was

also the most common reason for going straight and the most commonly mentioned cost of offending compared to the fear of imprisonment.

Other research on Victims-Offenders' satisfaction has shown that there exist much anecdotal evidence from victims and offenders who often speak of their participation in a restorative process as a powerful and transformative experience, which helped in their healing process. Umbreit *et al* (2001:1) give instances such as parents of murdered children who have expressed their sense of relief after meeting the offender/inmate and sharing their pain as well as being able to reconstruct what actually happened and why. One of such mothers whose son was murdered stated, 'I just needed to let him see the pain he has caused in my life and to find out why he pulled the trigger'. A schoolteacher who was assaulted and nearly killed commented after meeting the offender in prison, 'it helped me end this ordeal...for me; it has made a difference in my life, though this type of meeting is not for everyone'. An offender/inmate who met with the mother of the man he killed stated, 'it felt good to be able to bring her some relief and to express my remorse to her'. A doctor in California whose sister was killed by a drunk driver and who was initially very sceptical about meeting the offender, following the restorative process, stated 'I couldn't begin to heal until I let go of my hatred... after the mediation I felt a great sense of relief...I was now ready to find enjoyment in life again' (Umbreit, *et al*, 2001:1)).

Similarly, in South Africa, victim's participation in the Truth and Reconciliation Commission brought relief and healing to some. Instances from the SATRC Report has shown that one victim reported that he had been healed by the process of storytelling when he said: 'I felt that what has been making me sick all the time is the fact that I could not tell my story. But now it feels like I got my sight back coming here and telling you the story' (see Borer, 2004:6). The ability to forgive for healing process to begin was also astounding, as was in the case of a widow of a disappeared activist husband who found out through the SATRC hearing that the husband had been kidnapped and killed, his body roasted over a fire for six hours, and his ashes dumped into the river. After the SATRC hearing, she declared 'don't we want peace for South Africa? How are we going

to find peace if we don't forgive? My husband was fighting for peace for all South Africa. How can you correct a wrong with a wrong?' (See Hayner, 2001:3).

Taking a positive lesson from the above healings and the assumed reconciliation of South Africans that occurred after the SATRC experience, when Nigeria transited from military authoritarianism to democratic governance in May 1999, the elected President (Olusegun Obasanjo) established the Nigerian Human Rights Violations and Investigation Commission (the Oputa Panel) to give victims in Nigeria that potential pleasant experience. At the inauguration ceremony of the Panel on 14 June, 1999 he said that the mandate of the commission was the determination to heal the wounds of intergeneration conflicts in Nigeria from 16 January, 1966 up to the end of authoritarian rule in 1999, and to ensure a complete national reconciliation that would be based on truth and knowledge of the truth in the land. He also affirmed that his government was going to do everything possible to address all issues that tend to bring the country and the people into dispute and conflict, or perpetuate injustice and violence in the land (see Yusuf, 2007: 272 for instance). His speech suggests the power in the truth seeking mechanism and its possible contribution to restoration and national healings. But these aspirations were not met, because as discussed earlier, three of the former military Heads of State and their cohorts manipulated the Nigerian judiciary in transition to pass an *ex parte* motion restraining the Commission to summon them. They sought among other injunctions, a declaration of the court that the President lacked the powers to act under the existing law of the land to establish a body like the Oputa Panel for the whole country because it contravened their rights (also see Yusuf, 2007). Would Nigeria and Nigerians have benefitted from reconciliation, healings and restorative experience if the Nigerian Human Rights Violations and Investigation Commission (Oputa Panel) was not truncated by the "law"?

In spite of the favourable experiences of victims, and evaluation reports of restorative justice effectiveness discussed above, criticisms on the effectiveness of restorative justice persist in some jurisdictions. However, the evaluation results of restorative justice programmes are generally positive. Perhaps, it is in view of these verifiable evidences of restorative justice such as those enumerated above that Braithwaite says:

The now considerable literature on public attitudes to crime shows that while citizens are extremely punitive and unforgiving in the abstracted attitudes they express in public surveys, as citizens get closer and closer to making judgements about particular offenders based on a detailed understanding of the background of the offence, they get less and less punitive (Braithwaite, 1999:15).

Meanwhile, the question that need to be answered by this research is how true is the above statement by Braithwaite in the opinions of victims of crime, and the criminal justice professional in Nigeria (see the subsequent chapters on findings for results).

Restorative Justice: Victimological Evidence

This section of the thesis looks at empirical evidence of victims' needs; expectations and satisfaction with restorative justice, and the criminal justice system elsewhere with a view to learning lessons from experience for Nigeria. According to available research evidence (see Williams *et al*, 2003, Williams, 1999) victims of crime suffer adverse psychological consequences such as vulnerability, fear, depression, low self-esteem, insomnia and post-traumatic stress syndrome due to their victimization. Takahashi (2005:25) reporting the work of Janoff-Bulman (1985) argues that coping with victimisation is part of the process of 'coming to terms' with the above shattered assumptions by 're-establishing a conceptual system that will allow the victim to once again function effectively'. Takahashi notes that victims' coping strategies and the link between social support (social status, friends and family) and the victims' recovery process, and amount of time available for victims to recover could affect recovery from victimisation. He argues that failure of the victims to cope might increase a sense of helplessness, vulnerability, and disappointment with authorities. So victims with insufficient resources to cope with problems by themselves are more likely to expect authorities to protect them. But it has been argued by Wemmers and Canuto (2002) that victims of crime often feel marginalised and dissatisfied with the treatment they receive from criminal justice authorities. So what do victims of crime wants from the criminal justice system, and how do they want it? Evidence of victims' needs; expectation, and satisfaction are documented under the subheadings below.

Information need and the Victims of crime

Studies by Williams *et al* (2003), Wemmers (1996) and Shapland *et al* (1985) have demonstrated that victims of crime are unhappy with the lack of information they receive and their general exclusion from the criminal justice process. Victims therefore want to be included in the criminal justice process just as Christie (1977) advocates in his seminal paper ‘conflict as property’. For instance, in a study of over 3000 victims of crime conducted by Kilchling (1991), 40% of the victims that participated in the interview felt that they should have the right to obtain information regarding their case at any time (especially from the police). Shapland *et al* (1985) got similar complaints from victims of violent crime that participated in their research. The authors found that victims feel neglected and angry about the lack of information they were given regarding the progress of their case. Similarly, Williams *et al* (2003:26) record the concerns of the victims of crime that took part in their study. When respondents were asked about the final outcome of their individual cases, many, the authors reported had no idea whether their case was going to court or whether it had been closed. Some of the respondents commented thus:

“Mine was two years ago, a year past January, I haven’t heard a thing”.

“A year past March and two years past January”.

“Well they don’t really tell you”.

“No, you didn’t hear anything back. We never heard another word about it...” (Williams et al, 2003:26).

The above comments by victims of crime reminded the researcher of a scenario that he personally witnessed in the early 90s in an open market in Abakpa-Enugu, Nigeria. This experience is worth recounting to support the above research evidence. The story is that of a woman who might have been a victim of crime (or might have conspired with the police to lock up an offender or supposed offender as it sometimes happen in Nigeria of those days of military rule). While shopping for food items in the open market, she suddenly saw the accused person passing by her, and she exclaimed in *Igbo* language: ‘*nda- hapu onyea!*’ (Which, literally mean ‘so these ‘people’ have released this man?’). After this statement, she fainted (probably due to shock). The researcher’s follow up personal enquiry revealed that the man was at that time, recently released from an

Awaiting Trial (police or prison) cell unknowingly to the woman.

So for many victims of crime Shapland *et al* (1985) argue that their need for basic information centred on simple explanations about key decisions related to their cases (such as arrests, releases, or sentences for instance). In the work of Williams *et al* (2003) already cited, a victim of crime expresses his/her dissatisfaction with such lack of information when he/she says: 'The police go to bother to make the arrest...the court lets them (the accused) walk the next day' (p.29).

Relating this argument to finding answers to the social malaise and crime of corruption against the people in Nigeria, the researcher is arguing that the information most people (especially the Niger-Delta people) in Nigeria need are: "What is happening to the oil money?", "How can the people be so blessed yet still live in extreme want?" Put differently, how can a person live in the midst of plenty water and still wash his hands with spittle? Perhaps, realistic answers to these questions which has eluded the common people and the growing unemployed youths in Nigeria, might help reduce the high rate of 'compensatory crimes' in Nigeria, and is probably one of the most common information need that the justice and social system in Nigeria can provide victims of crime so as to reduce the escalating victimisation, crime and fears related to hostage taking, pipeline vandalism and oil bunkering in the country. This opportunity the researcher would argue is open and possible in restorative justice paradigm if only the Niger Delta Truth and Reconciliation Commission (Justice Kayode Ezzo Panel) set up on 9th of June, 2008 to investigate the truth and proffers lasting resolution to the debacle is not similarly truncated by the "law" as it was in the case of the Human Rights Violations and Investigation Commission (the Oputa panel) highlighted earlier.

Restitution/compensation and the victims

In addition to information need discussed above, Williams *et al* (2003) found out that most victims of crime report their victimisation to the police out of a sense of duty, or for insurance purposes especially in property crimes. Shapland *et al* (1985) argue that victims of burglary crime are generally well aware that the police will probably be unable

to solve their case. If the police do solve the case, many victims of crime are interested in getting reparation from their offender (Wemmers and Canuto, 2002). For instance, in a study conducted by Baurmann and Schadler and reported by Wemmers and Canuto (2002), it was found that nearly two thirds (62.5%) of the respondents, which included 169 victims of violent crime and property crimes, expressed an interest in reparation, without the researchers having asked about it. When the researchers directly questioned the victims of crime, the number of victims interested in reparation rose to 72.5%. The study also found that 85% of victims of property crimes as against 37% for violent crimes expressed their interest in restitution. Restitution therefore appears to be more attractive to victims of property crimes in this study than those of violent crime.

Citing a similar study conducted by Sessar , Wemmers and Canuto (2002:3) note that of the 843 victims of property and violent crimes interviewed, 82% responded positively when asked the question: ‘suppose that the judge in your case makes the following proposal: the offender will be sentenced to make restitution. If he performs this imposed sanction, then the penalty will be reduced or remitted’.

In the same vein, studies carried out in the United States and the United Kingdom by Shapland *et al* (1985) found almost unquestioning acceptance of the appropriateness of the principle of compensation from offenders, its place in the criminal justice system, and more particularly, its preference by those (victims of crime) who have received it. No wonder then Hodgson (1984:6) in his Committee Report ‘The profits of crime and their recovery’ saw wisdom in the writing of Jeremy Bentham: ‘The Principles of Morals and Legislation’ which argues that: ‘Compensation will answer the purpose of punishment but punishment will not answer the purpose of compensation; for by compensation, the two great ends of justice are both answered at a time, by punishment only once’ (Bentham, 1781; cited in Hodgson, 1984:6).

While victims of crime expressed their interests to be compensated for their material damages as reported above, material damages are just one type of injury as victims also suffer ‘emotional and psychological injuries’ such as ‘fear and anxiety’ (Williams *et al*,

2003; Williams, 1999). In a study on victims' needs and perceptions, conducted by Baurmann and Schadler (1991) and cited by Wemmers and Canuto (2002), it was reported that when victims were asked to name the single most severe injury they had sustained, 49% of the victims indicated emotional injuries. So besides material reparation for material damages, an apology is another way in which victims of crime could receive compensation. For instance, Takahashi (2005) reports that, for many Japanese victims of crime, a sincere admission of responsibility and expression of remorse by the offenders may be an important part of being acknowledged as a victim, and may help in the healing experience. For this reason, the police judicial accountability, remorse, apology and compensation paid to the "Apo Six" in Nigeria in December 2005 is worthy of mention here. "Apo Six" is a case of five young men, and woman who were returning from a night club and shot dead at Apo village Abuja, Nigeria by corrupt policemen on duty. The police in an attempt to deny judicial responsibility and to cover up the crime labelled them as 'armed robbers'. But testimonies from people who knew these young men as motor mechanics and those who saw them leave the night club after the night party of 8th June 2005 were presented to civil liberty groups, and government was intimidated to set up a judicial inquiry which held the police authority culpable for extra judicial killings. In view of the indictment of the police, the national police authority was remorseful, and apologetic to the families of the victims and to the Nigeria people for lying against the deceased victims. The police authority dismissed the officers involved, and also took the responsibility of giving the deceased victims befitting burials. In addition, they paid out 18million naira in December, 2005: a financial compensation of 3million naira each to the families of the deceased. The families mentioned that their happiness was not the monetary compensation but the public apology by the national police authority, and the renunciation that the deceased victims are not 'armed robbers' as initially portrayed by the police (see Stone, 2007 for academic article on this).

Hence in focus group meetings with 18 victims of violent and property crimes, Bazemore (1999) found that for some victims, material compensation is regarded as a sanction and part of offenders' accountability but, more interestingly, Bazemore found that the better victims of crime felt treated by any system, the less significant monetary restitution

became. It could therefore be argued that victims' interest in restitution is not based solely on material reparation, but also about holding the offender accountable for his/her offending behaviour. However, when apologies become mandatory Takahashi (2005) and Bazemore (1999) argue that such apologies become cold, impersonal and offensive to victims. This finding therefore confirms the theoretical proposition which describes restorative justice as 'a healing justice'.

Do victims want to meet their offenders?

In another development, the most contentious issue in restorative justice literature today is whether restorative justice conferencing is in the interests of the victims of crime, and whether victims want to meet their offender in mediation meetings. As cited earlier, Wemmers (2002) argues that while restorative justice conferencing may be attractive to offender-centred advocates this is not the case for some victim advocates. So do victims want to meet their offenders?

In a study conducted by Kilchling (1991), 42% of the victims of crime expressed their interest in restorative justice however; the study reports that a meeting with offenders in order to reach a satisfactory agreement with such persons was rejected by the majority (55.6%) of the victims of crime. The reasons for rejecting such a restorative justice meeting by the victims of crime (respondents) were: refusal in principle (33%), no interest in talking with the offender (16%), and fear of meeting the offender (13%). Kilchling noted that about one third of the victims of crime would have approved of an 'out of court settlement' provided that no direct contact and no personal meeting with the offender were involved.

In another research in Britain conducted by Hough and Mayhew (1985), the authors report that 49% of the victims of crime noted that, in principle, they would agree to meet the offender in order to work out an agreement. This percentage was however; lower for assault and robbery victims (33%) than for victims of property crimes (60%). As in Kilchling's study, the percentage of victims of crime willing to participate in restorative justice increased from 49% to 69% if they did not have to meet with the offender. In

another victims' opinion poll research conducted in Britain by Maguire and Corbett (1987), the researchers found that most victims of crime rejected the possibility of meeting with their offenders. However, the authors noted that victims who had been visited by victim support workers were more willing to meet with the offender (43%) than those who have no such opportunity (32%). This research report therefore supports the proposition that there is a correlation between social support network and victims' recovery process from victimisation because when an individual is victimised he/she does not only suffer from the victimisation but also suffers social alienation. Hence Wemmers and Van Hecke (1992) note that on factors that have contributed to victims' coping with victimisation, 58% of the victims in their study indicated that talking with family or friends had helped. Herman (1992:9) supports this assertion in a paper entitled 'Considering Trauma and Recovery: a three-stage model of supporting trauma recovery' which states that:

In our work with trauma groups (victims for instance), the issue of safety was ever presented and constantly being supported. We returned to the story of the events, identifying losses and developing individual and group versions of what happened. From an early stage, the process of "reconnection" [social support network] was ongoing as an integral part of the work. Indeed the desire to "reconnect" was the impetus for some people to become part of the group' (Herman, 1992:9).

Meanwhile, as to why they would want to meet the offender, the authors report that victims gave the following reasons: to ask why, to see what the offender was like, to arrange financial compensation, to let the offender see the effect of the crime, and to tell the offender what they thought of him/her. Whereas reasons for not wanting to meet with the offender were: fear, anger, and lack of interest. While these reasons for not wanting to participate in restorative justice meetings were consistent with those given in Kilchling's finding, the authors however, did not mention the time lapse between the period of victimisation and the time the victims' opinions were polled. This is important because a very recent victimisation would certainly elicit such emotions as: fear, anger and dislike and perhaps less to those with an elapsed period of time. This study surveyed the opinion of victims in Nigeria to ascertain whether the period of victimisation before mediation could influence their decision to participate or not to participate in restorative justice (see

findings in the subsequent chapter).

Other research surveys revealed that there is an interest among victims of crime for mediation. In the 1999 victims of crime survey in Canada (see Wemmers and Cyr, 2003); victims of crime were asked whether or not they were interested in mediation. Mediation according to these authors was described as a face-to-face meeting between the victims and the offenders with the help of a mediator, to find an appropriate way of dealing with the offender. Twenty four percent of the victims questioned expressed a strong interest in mediation and another 27% said that they were somewhat interested. While the remaining 46% said that they were not all interested. Victims of property crimes showed a greater interest in mediation than victims of violent crimes (Wemmers and Cyr, 2003). The authors however, reported that even among the victims of serious crimes such as sexual assault, 26% of them said that they were 'very or somewhat interested' in mediation. Similar results were reported by Mattinson and Mirrlees-Black (2000) in the 1998 British Crime Survey. The authors reported that forty one percent 41% of the victims of crime said that they would have accepted the opportunity to meet their offender. They also found that victims were more interested in restitution than a face-to-face meeting, with 58% of victims saying they would accept compensation from their offender. These studies therefore show that while some victims of crime would clearly want to meet face-to-face with their offenders, others would merely seek compensation rather than meeting the offenders. The findings from the opinions of victims of crime in Nigeria that participated in this study differ significantly from the studies reviewed here in terms of preference for face to face mediation. However, this requires further investigations in Nigeria to better understand and ascertain whether there would difference in findings between what respondents say (opinion) and what they do (practice) because their responses in this present study are more anecdotal and speculative rather than empirical.

Victims and empowerment

Christie (1977) argues that the criminal justice system disenfranchises the victims of crime for not letting them have 'voice' in their own case. This issue of victims' empowerment sometimes translated as 'victims' decision making power' has been one

‘hot spot’ that has generated controversy amongst restorative justice advocates. The crucial point in this debate is whether or not victims of crime want to influence sentencing decision making. According to Ashworth (2000), victims’ impact on sentencing is a central argument against victims’ participation in the criminal justice system. It is also a major characteristic of restorative justice programmes, and for some, according to Roach (1999) it is ‘a key selling point for victims of crime’.

According to Shapland *et al* (1985), victims of crime do not want the ‘burden’ of decision making power. In a study by Kilchling (1991) which supports Shapland’s argument, he presented victims of crime with the statement: ‘After reporting the crime to the police, the victim normally loses control of the further development of his/her own case’. He then asked victims of crime to indicate whether they agree or disagree with a number of other statements regarding the desired role of the victims of crime in the criminal justice system. He found that 47% victims of crime, 61% former victims and fifty six percent 56% non-victims agreed with the statement that losing control over their case to the police ‘can be helpful for the victims’. In addition, 70% victims of crime, 80% former victims and 77% of non-victims agreed with the statement that ‘the victim should neither have to be concerned about (reaching) a settlement with the offender nor about his punishment’.

The findings above suggest that victims of crime are often quite willing to hand over responsibility to criminal justice authorities. If so, why should restorative justice advocate for victims of crime to have a voice in the criminal justice proceeding? And why should victims’ reluctance to embrace restorative justice be criticised by some restorative justice advocates? Wemmers and Cyr (2003) attempt to answer these questions by arguing that ‘decision control, or the power to accept or reject a decision, is a major aspect of any fair procedure’, and that an important aspect of procedural justice is ‘process control or voice’. ‘Process control’ according to them refers to the extent to which parties are allowed to have input into the decision making process in ‘Procedural justice’. Procedural justice according to these authors is a body of theory and research regarding the perceived fairness of procedure, developed by Thibaut and Walker (1975). Wemmers and

Cyr (2003) argue that the proponents of procedural justice theory find that people prefer to solve their conflicts bilaterally; retaining process and decision, and that people seek third party intervention, only when they are unable to handle the conflict themselves. In other words, the level of conflict intensity determines the degree of third party intervention desired. Wemmers and Cyr (2003) argue that in high conflict situations, parties are willing to forfeit decision control provided however that they retain 'process control'. It is argued that when parties have opposing interests, the arbitration procedure (such as: moot, mediation and bargaining), which allows input from both parties best meets the disputants' desires for the dispute resolution. Autocratic procedures (such as criminal justice intervention), which deny parties any input, were preferred only when in addition to the two sides having opposing interests, there was also temporal urgency. That is, in crisis situations (Wemmers and Cyr, 2003).

The implication in the analysis of this theory for victims of crime and restorative justice advocacy is that, when victims of crime report a crime to the criminal justice system (the police for instance), they are formally requesting intervention by a third party. However, according to victimological and criminological literature, there are many different reasons why victims report crimes to the police. Victims may seek compensation rather than punitive intervention (see Bazemore, 1999), as a sense of duty or for insurance purposes (see Williams *et al*, 2003). Hence, it would be an error to conclude that because the victim reported the crime to the police he/she necessarily defined the situation as one of high risk in which he/she sought third party intervention for punitive purposes (Wemmers and Cyr, 2003). So it could be argued that what is clear in victimological literature such as Williams *et al* (2003), Shapland *et al* (1985) regarding victims' participation in the criminal justice system, is not for victims to influence sentencing of offenders but for 'information, consultation and consideration'. That is, what Wemmers and Cyr (2003) call 'decision making processes' but not 'decision making power'.

Experience of victims in pre-sentencing restorative justice projects

In this section of the thesis, the researcher takes a global look at the experiences and

expectations of victims of crime who actually participated in diversionary (pre-sentencing) restorative justice programmes (where they existed) all over the world. The knowledge of the expectations and experiences of victims in this phase (pre-sentencing) of restorative justice programme is very important knowing that restorative justice should be offered at a time when feelings are neither extremely high nor diminished entirely, and given that most victims have reported that immediately following victimisation, they felt shock, angry and vengeful (see Marshall and Merry, 1990; Williams *et al*, 2003). Hence, this study investigates the opinions of victims of crime in Nigeria with regard to their preference for mediation at pre-sentence, sentencing stage, and or post sentence reconciliations (see question 15 of the VQIS in the appendix for instance).

By diversion, we mean “the use of voluntary alternative measures to the criminal justice system”. Typically, diversion takes place at the police level and is directed at young offenders who have committed minor offences (Wemmers and Canuto, 2002). So from a juvenile justice or legal perspective, diversion could occur in court when the prosecutor or the victim decides to withdraw the charges, or when the magistrate decides to impose an order other than imprisonment. But looking at diversion from the point of view of the offender, Fine (1996) defines diversion as ‘a turning away from crime, towards being a productive member of the community’ (the desistance theory). So do victims of crime in Nigeria want diversion of young offenders so that they could become productive members of the society, given that immediately following the crime, victims of crime often experience shock, anger and fear (see Williams *et al*, 2003 for instance) before passing through a phase of searching for an explanation as to why the crime occurred. This is why Reeves (1989) argues that the length of time between the offence and the offer of a restorative justice meeting is of critical importance for victims of crime. Given the significance of this argument to this research in Nigeria, what are the experiences and expectations of victims of crimes that have participated in diversionary (pre-sentencing) restorative justice projects elsewhere?

In a study conducted in New Zealand by Morris, Maxwell and Robertson (1993), the researchers found that following victimisation ‘some’ victims did not wish to attend the

conference for a variety of reasons such as: too busy; uninterested; afraid of the offender or his/her family; and the fear that the meeting might evoke their anger. However, among victims who did attend the conference, their expectations/ reasons for doing so were: for their own interest (to receive compensation or to confront the offender); to help or support the offender; a sense of duty, and curiosity. On the experiences of the victims that participated in this study, most victims claimed to feel better after the conference. Victims who said that they felt better also said that they had been involved in, rather than excluded from, the process. They also felt that the meeting with the offender allowed them to release negative feelings about the offender and the offence.

The study however found that, about one quarter of the victims who participated in this conference claimed to feel worse after attending the conference because the victims expressed feelings of fear, depression, distress and unresolved anger (Wemmers and Canuto, 2002). Others complained about the lack of support they had in the conference in contrast to how they perceived the offenders' situation. Some felt that the 'outcome' was inadequate or were distressed by the lack of remorse shown by the offender or the lack of redress at the conference. The high level of 'outcome dissatisfaction' among the victims who participated in this study is to be noted for the benefit of any potential restorative justice projects in Nigeria. This high level of victims' disenchantment in this programme points to the argument of Williams (2001) that 'to put victims in the position of taking part in mediated contact with unrepentant offenders or offenders who deny their guilt is potentially a form of re-victimisation'. In the same vein, Williams (2001) warns that restorative justice which involves a lack of respect for the fundamental principles of (voluntary participation for instance) is 'a contradiction in terms'. Hence he argues that 'the rhetoric of restorative justice' could be used by some agents 'to mask a mixed model of authoritarian' or, 'at best, partially restorative approaches' such as 'coerced reparation' for instance, which in this case might have occurred.

This warning is imperative to any potential organisers of restorative justice programmes in Nigeria who might fail to include victim voices early on in the design and implementation of programmes, on the assumption that they know what victims need and

want; and who might not be willing to engage in the potentially difficult dialogue that is not only likely but essential when victims and victim advocates are involved, most often fail to restore justice, because without these considerations it is unlikely that victims' interests and concerns in restorative justice are likely to be addressed.

However, in a study conducted by Umbreit (1994) to test the experiences of victims of crime, he found that about 95% of the victims felt satisfied with the mediator, while about 5% felt that the mediator was biased towards the offender. It is important to note that the opinion of this small dissatisfied group of victims in this study re-echoed the need for neutrality, impartiality and proper training of mediators in equal opportunities and non-discrimination if restorative justice is to achieve its objectives. Regarding their satisfaction with the justice system after participating in the programmes, 79% of the victims in the mediated/experimental group indicated satisfaction, while 57% of both the first, and second comparison group indicated satisfaction respectively. In the same vein, Umbreit reported that victims in the mediation/experimental group were more likely to state that they had experienced 'fairness' in the processing of their case than victims in the first, and second comparison groups (i.e. 83% versus 53% versus 62%) respectively. What this finding has demonstrated is that restorative justice can be delivered in ways which satisfy victims if all procedural guidelines are complied with, a lesson worthy of note for any potential restorative justice projects in Nigeria.

In Australia, Strang (2000) evaluates the 're-integrative shaming' experiment which was based on interviews with 169 victims of which 85 victims participated in police-led reintegrative shaming conferences and 84 in court based diversionary programmes. Strang (2000) reported that 63% of the victims that took part in the reintegrative shaming conference and 54% of the court based diversionary programmes claimed to be satisfied with the way their cases were dealt with. In addition to victims' satisfaction, Strang (2000) also inquires into victims' procedural preferences (i.e. conferencing versus court based programmes). Significantly, 68% of the conference victims versus 49% of the court victims agreed that they were pleased with the way their cases were treated. Strang (2000) further reveals that victims in the conference group were more likely to be notified

of the development of their cases and receive compensation than the victims in the court group. This finding is quite essential, for penal reform discourse in Nigeria given that the absence of notification (information) and compensation are important complaints well documented in victimological literature by victims against the criminal justice system and that these outcomes enhance victims' satisfaction with the justice system (see Williams *et al*, 2003).

With regard to 'outcome satisfaction', Strang (2000) found that 81% of the victims of property crimes and 56% of the victims of violent crimes whose cases were assigned to conferencing were satisfied immediately after the conference but however warned that changes in 'outcome satisfaction' could occur over time due to failure of the offender to comply with the agreed outcomes. She therefore suggests that follow-up/post-conference monitoring of agreements is extremely important for lasting victim satisfaction. It is therefore imperative to note here that in the event of any restorative justice projects taking off in Nigeria in the future, the need for the programme coordinators/supervisors to actively monitor compliance of agreed outcomes and to notify victims that such agreements have been honoured is an essential element to the success of the project. Programmes therefore need to be structured (e.g. empowered by law) and resourced to permit monitoring of compliance with agreements and, proper training of facilitators on equal opportunities, non-discrimination, good practice and conference organisation in any future restorative justice projects in Nigeria could help avoid some of these complaints.

The experiences and expectations of the Dutch victims of crime in the Netherlands' diversionary restorative justice programmes are also worthy of review here. According to Wemmers and Canuto (2002), the programme under review supplies free lawyers to victims and offenders who would try to work out an out-of-court agreement. The victims and the offenders did not meet personally; only the lawyers had contacts. Cases in which an out-of-court agreement was reached were then dismissed by the office of the public prosecutor. But where no agreement was reached, the case would be returned to the public prosecutor for court proceedings. In as much as corruption among the professionals involved might be an issue in the Nigeria context, this project could

however, be replicated in Nigeria using the redundant lawyers at the Nigerian Legal Aid Council, as a means of quick dispensation of justice, non adversarial trial, and decongestion of Awaiting Trials Persons in the Nigerian prisons and police cells.

This Dutch project might as well be of interest to the proposed ‘administrative courts’ in Nigeria which advocate ‘front loading’ of cases by prosecutors to determine cases with ‘substance’ that could go through prosecution, and those that could be dispensed with quickly at the pilot Citizens’ Rights and Mediation Centre (see Ojo, 2005). Outcomes of such application are likely to be relevant to the future direction of restorative justice practice and research in Nigeria.

Victims of crime in ‘court-based’ restorative justice projects

Unlike the diversionary restorative justice programmes which typically take place at police level, court based programmes can take place at any stage of the court proceeding such as: before a guilty plea, after a guilty plea, or at sentencing. Court-based restorative justice programmes often involve adult offenders and serious crimes, so if agreements are not reached by both parties, the offender’s case will be re-entered for court proceedings.

In Germany for instance, Netzig and Trenzcek (1996) conduct detailed interviews with seventy five victims and adult offenders involved in moderate and serious cases who participated in the *Tater-Opfer-Ausgleich* programme. The authors found that one third of the cases were dealt with successfully through face-to-face mediation while about two thirds of the cases were mediated indirectly with the mediator talking to each of the affected parties individually. The expectancies of victims who chose direct mediation include: to ask the offender ‘why me?’; to know what kind of person the offender is; to know why the offender committed the crime; to tell the offender what they think of him/her (ventilation); to confront the offender with the consequences of his/her offending actions; to be able to get anger, grief and disgust out of their minds (healing); and to put an end to the conflict and avoid further victimisation (harmony restoration).

In an evaluation of eight Victim Offender Mediation programmes in the USA Coates and Gehm (1989) found that victims chose to participate in mediation with the hopes of: recovering their loss, helping the offenders, being involved in the criminal justice process, teaching the offender a lesson, holding the offender accountable for his/her offending behaviour, and making the offender understand that his/her offending behaviour hurt people. Victims who chose not to participate indicated that: 'the loss did not merit the hassle', they were afraid of meeting the offender, and they had already agreed on an outcome. But regarding the suitability of mediation as an alternative sanction, (a research question that this study investigate in Nigeria non empirically) Coates and Gehm found that 70% of the victims who participated in the study felt that the offender had been adequately punished, and 24% however indicated that the punishment was too little while 5% felt that it was too much.

An assessment of court-based restorative justice programmes in four Canadian cities published by Umbreit (1995) indicates that victims of crime in Canada (like victims in other studies reviewed above) were more concerned with the following expectancies: to receive answers from the offender, to tell the offender the impact of the event, to receive an apology from the offender, and to be able to negotiate restitution with the offender. This study was conducted using telephone interviews with 323 victims from four different restorative justice programmes in the cities of Winnipeg, Ottawa, Langley and Calgary. The findings of this study conclude that 78% of the victims who participated in mediation expressed satisfaction with the manner the justice system responded to their case compared to 48% of victims whose cases were referred for mediation but never participated. The findings also suggest that 11% of the victims who participated in mediation were less likely to express fear of revictimisation by the same offender compared to 31% of the comparison group. In the same vein, 53% of the victims who participated in mediation were less likely to be upset about the crime compared to 66% of the comparison group. This finding is important to the researcher's investigation of whether restorative justice would be an acceptable alternative to prosecution compared to the conventional criminal justice in Nigeria. The opinions of the Nigerian research respondents are presented later in the result and discussion chapter for comparative

analysis.

In an article entitled ‘‘Mediation for Reparation: The Victim’s Perspective’’, Aertsen and Peters (1998) report the experiences of victims of crime in Leuven, Belgium who participated in a project similar to the ‘Administrative court’ piloted in Nigeria. This court-based mediation programme received cases from the office of the public prosecutor. The programme was reserved for more serious cases in which the prosecutor’s office has already decided to prosecute. The authors described this programme as ‘victim oriented’, because the mediator first contacted the victim who could choose both direct or indirect mediation, and the results of the mediation were forwarded to the judge, who could take them into consideration when sentencing the offender. The aim of this programme according to the authors is to offer the victims reparation for material as well as non-material damages.

Aertsen and Peters (1998) found that the expectations of victims who participated in this study centred on the needs: to confront the offender with his/her responsibility, to make a positive impact on the offender, to obtain restitution and reparation, to obtain direct information about the reason and the circumstances of the offence, and the need to pass a message to the offender, sensitizing the offender to the consequences of his/her actions. Regarding the desirability of a direct mediation (face-to-face meeting) with the offender, Aertsen and Peters (1998) found that between 30% and 50% of the victims confirmed their willingness to make use of the opportunity, and that 50% of all the referred cases had reached an agreement. The authors found that objections against face-to-face meeting with the offender were mostly related to the victims’ feelings of fear, anger and scepticism about the possibility of a meaningful outcome with the offender. This finding is imperative to the piloted ‘Administrative court’ project in Nigeria and also points to the fact that the possibility of indirect mediation must always be kept in mind by all mediators as this might be less threatening to some victims of crime.

In another development, Wemmers and Canuto (2002) found that out of the total victims who participated in an indirect mediation coordinated by the office of the public

prosecution in Netherland, 98% of them clearly wanted restitution from the offender. To ascertain whether the victims were merely interested in compensation regardless of who paid, the study found that 96% of the victims felt that the offender and not the state should provide the compensation because, according to the authors, victims saw restitution as a suitable sanction hence 80% felt that the payment of restitution was an adequate sanction especially in their own case and 98% felt that ordering offenders to pay restitution was a suitable or very suitable means of fighting crime. However, a mere offer of restitution without remorse or apology from offender (if the victim is willing) could be offensive to some victims in view of its psychological healing power. Moreover, there might be concern with this form of restitution because offenders with means (economic power for instance) are often quick to throw some money at victims, hoping victims/society will forget the deeper wounds that need to be healed from their offending behaviour.

On factors related to victims' satisfaction, the study found that 79% of the victims who knew that their offenders were willing to pay compensation were more satisfied than the 67% of the victims who knew that their offenders were not willing to pay compensation. Fifty nine percent of the victims who did not know whether or not their offenders were willing to pay compensation were the least satisfied. The study also found that victims who agreed that the mediator had provided clear information were more likely to be satisfied with the mediation. So this finding re-emphasised the significance most victims of crime place on 'information' about their case as earlier cited in this work.

Victims of crime in 'post-sentencing' restorative justice project

In recent times, 'post-sentencing' restorative justice programmes are emerging (e.g. restorative justice in prison). Unlike the pre-sentencing and court-based programmes which focus on diversion and restitution, the value of post-sentencing programmes is largely psychological (i.e. allowing victims and offenders to come to terms with the offence and to put it behind them). Most of these programmes are relatively new, and typically deal with serious offences. Evidence from this project elsewhere include: The

Hague experiment in 1997 (see Wemmers and Canuto, 2002), the work of Launey (1987) with young burglars in Rochester, England, and the work of Bonta *et al* (1998) in Ottawa-Carleton Detention Centre in Canada. Findings from these projects are regarded as ‘positive experience’. The ‘positive experience’ is encouraging because it is hoped that by talking with the mediator, victims might be assisted in dealing with the emotional aftermath of victimization. Buonatesta (2004) also reports similar findings in research on prison mediation in Belgium. Hence Williams (2005:112-7, 2006) argues that once victims are given the opportunity to express their emotional and practical needs, a restorative justice project could be designed to meet them, and ‘this is what has happened in Canada, the USA and Belgium’ (Williams, 2005:112). Are there any possibilities of this ‘positive experience’ happening in the Nigerian prisons to enhance community reintegration, and re-moralisation of offender on discharge?

Restorative Justice for Victims of ‘Serious Crimes?’

In this section, the researcher attempts to review the expectations and experiences of victims of serious/violent crimes. This is imperative because an interesting ideological debate in the restorative justice literature is whether a restorative justice initiative is suitable for victims of serious crimes. For instance, the UK Home Office (2004) in its ‘Best Practice Guidance for Restorative Justice Practitioners’ discourages the use of restorative justice process in the handling of domestic violence cases. However, victimisation surveys reveal that about 74% of violent crimes involve a relationship between victims and offenders (see Wemmers and Canuto, 2002). Similarly, it could be argued that the fact that parties already know each other and share some kind of relationship makes these cases particularly suitable for restorative justice. Is restorative justice suitable for serious and violent crimes?

Research in the United States of America by Umbreit *et al* (1999:323) suggests that a specific model of restorative justice known as ‘Victim-Sensitive Offender Dialogue (VSOD)’ should be used in violent crimes. According to the authors, this model differs from the conventional Victim-Offender Mediation (VOM) process because it involves

certain characteristics such as: emotional intensity; extreme need for non-judgemental attitude; longer case preparation by facilitators (about 6 to 18 months); multiple separate meetings prior to joint session; multiple telephone conversions; negotiating access with prison officials to visit inmate and to conduct mediation in prison; coaching of participants in the communication of intense feelings; and boundary clarification (when to stop mediation, and when to refer for therapy). Mediation in the 'Victim-Sensitive Offender Dialogue' therefore requires essentially an extensively trained mediator, with a longer case preparation and mandatory follow-ups subsequent to the mediation.

In an attempt to explain the VSOD model of restorative justice, Umbreit *et al* (1999) present two case studies, each involving the parents of murdered children. In one case, a mother whose son was robbed and murdered met with the offender. In the second case, the mother and father of a young girl who was abducted, raped and murdered met the offender. According to the authors, the expectations of these parents for participating in the VSOD were 'to meet the offender and to get answers to their questions'. One of the parents also expressed 'the need to see the offender' and 'a desire for him to feel and see her pain'. In one case, the victim (parent) declared after the mediation that although she could not forgive the offender, she however, did not see the offender as 'inhuman'. In the second case, the victim agreed that there was 'evidence of remorse' on the part of the offender although she doubted the truthfulness of the offender's story. The victims also expressed their desire 'to help the offender' and also mentioned that the mediation had helped them to 'move on' (Umbreit *et al*, 1999:325).

In another case study involving violent offenders in armed robbery, assault, sexual assault; negligent homicide, a sniper shooting and burglary Umbreit (1989), reports the experiences of the victims of these violent crimes. According to the author, the mediation sessions took place following the offender's sentencing (while serving prison sentences). Umbreit notes that he was a co-mediator in the mediation sessions involving the sniper shooting while he conducts interviews with victims of the other crime who had participated in the victim offender mediation programmes.

Umbreit reports that the reasons given by victims for their participation in the mediation programmes include: to ask the offender questions to understand why the incident had occurred, and to see the person who committed the crime. Following mediation, the author reports that most victims felt their questions had been answered and that they had a better understanding of the person who had committed the offence. Although, most of the victims indicated that they felt capable of forgiving the offender and, most of the victims felt they had the opportunity to obtain emotional closure, Umbreit however, notes that two victims remains angry but with lesser intensity than before the mediation. However, it would be scientifically incorrect to attribute any differences in the emotional state of the victims to the mediation process since the author did not indicate there were any interviews to ascertain the victims' state of mind before the mediation. Meanwhile, one could still attribute the change in the victims' emotional state since the author reported that 'following mediation most victims felt their questions had been answered' and that the victims 'felt capable of forgiving the offender' (Umbreit, 1989).

Very importantly Umbreit *et al* (1999, 2001), have shown, from their programme of research conducted over a 10-year period that victims of serious crimes can benefit from involvement in mediation with offenders. Interestingly, Williams (2006:5) argues that the first of the programmes delivering this kind of restorative justice arose from demand articulated by individual victims. For instance, Williams (2006) summarising the work of Umbreit *et al* notes that:

Victims in Canada and the USA were contacting prisons saying they wanted to meet 'their' convicted offenders; they wanted information, an opportunity to talk through with the offender what they had been through, a chance to achieve 'closure' or 'healthier grieving' and in some cases they wanted the impact of their meeting to make the offender think, and change including some who wanted to express their forgiveness or let go of their hatred (Williams, 2006:5).

The above desires mentioned by victims of serious crimes according to Williams (2006:5) are significant, because it 'suggests that these victims and survivors had very similar needs to those of victims in general, with the obvious exception of grieving a murdered victim in the least damaging way'.

In another development, Flaten (1996) examines seven cases of victim offender mediation involving serious crimes such as: manslaughter, attempted murder, and burglary committed by young persons who were detained and sentenced to imprisonment in Alaska, USA. The author's research was to determine whether the victims considered the mediation to be successful and what factors the victims considered to have contributed to its success or lack of success. The mediation process focused mainly on the reconciliation of both parties and reparation was encouraged. The author conducted in-depth interviews with seven participants between one and two years after the mediation. Flaten (1996) reports that all victims interviewed found the mediation process helpful in obtaining closure. Victims also expressed a better understanding of the incident and felt they could accept it as a past event. The victims' concern with the offenders' rehabilitation was also reported by the author as victims mentioned the importance of being able to tell the offender how they wanted the offender to improve his/her life. Similarly, four of the seven victims indicated that it was beneficial to have seen the offender in person and to have heard his/her apology.

When victims were interviewed on the factors that contributed to the success of the mediation, the victims indicated that, 'preparation prior to the mediation' and 'time elapsed between the offence and the mediation' were considered factors that contributed to the success of the mediation. According to the author, victims in the study recommended using mediation at least a year following the incident, as they said it gave them enough time to deal with their feelings of anger and grief. Flaten also notes that most victims felt that the mediation process was appropriate when dealing with serious offences and that it should be made available to other victims. While most victims described the mediation as successful, Flaten reports that one victim was however dissatisfied with the outcome of his case because the offender did not complete the restitution agreement. Hence, voluntary participation and the progression of the treatment of the offender were regarded by the victims as important elements for restorative justice practitioners to consider.

In Canada Robert (1995) extensively evaluates the Victim –Offender Mediation Project coordinated by the Fraser Region Community Justice Initiatives. The project involved victims of serious crime, such as serial rape, murder, armed robbery and aggravated sexual assault. The focus of the project was to promote the healing of the victims of crime and stimulate direct or indirect dialogue between both parties. According to the author, twenty four (24) face-to-face and telephone interviews were conducted with victims who participated in the project (comprising 11 victims of sexual assault, 5 relatives of murder victims, 6 victims of armed robbery, and 2 other victims). The author reports that the motives of the victims for accepting to participate in the project were the need to know more about the offence and to share its impact with the offender. Some felt that they had to participate to finally get closure because other forms of interventions such as victim assistance and counselling could not provide closure.

On the experiences of the victims who participated in the project, Robert (1995) notes that victim appreciated meeting with the offender. The victims felt that meeting the offender directly, to see him/her as a real human being, gave them a sense of control and allowed them to move on with their lives. They also appreciated knowing how and why the offence was committed and hearing this directly from the offender. Victims who had a face-to-face meeting with the offender accepted that ‘the acknowledgement of responsibility or apology from the offender, being able to express anger (ventilation) about the crime and its impact, getting the ‘why me?’ answers, and ‘seeing the offender being affected or honest’ have been helpful and important factors to them. According to Robert, all but one victim stated that they had been able to achieve closure and to come to terms with what had happened. Specifically, the author reports that victims felt they had finally been listened to, and that the offender was unable to have control over them, victims were now able to see the offender as a person rather than as a monster, and feeling more trusting in their relationships with others, less fearful, no longer angry, and at peace with themselves.

Similarly, Bethel and Single (1982) present the results from victims of domestic violence who participated in the District of Columbia, (USA) Mediation Services. According to

Bethel and Single, most victims 80% were satisfied with the mediation process, 90% felt that the hearing was conducted fairly, and 95% affirmed that the victims were given a 'voice'. As per the outcome of the mediation, Bethel and Single (1982) report that 80% of the victims were satisfied with the agreement while 73% agreed that the offender complied with the agreement. When questioned on whether violence reoccurred after mediation, 76% stated that no further problems were presented although this must have been problematic for the other 24%. So according to the authors, the high satisfaction rate found in this report show that mediation can be quite suitable for well screened forms of domestic violence.

In another development, Smith (1988) compares a non-randomised group of victims of domestic violence who went to court with a group of victims who were diverted to mediation in the cities of Charlotte, N.C, Los Angeles, CA, and Minneapolis, Minnesota. Her study was to examine and evaluate the experiences and perceptions of violent crime victims who knew their offender (such as victim's husband, boyfriend, mother; friend, neighbour) regarding the criminal court's response. She conducted structured interviews with 125 victims of non-stranger violence who were referred to court and 75 victims who were diverted to mediation. In all of these cases, mediation was either referred directly by the prosecutor, upon refusal to prosecute, or, if the prosecutor decided to prosecute, the criminal court judge could decide to divert the case to mediation.

Examining victims' experiences with the process, Smith (1988) found that victims in the mediation sample indicated that they felt they had a chance to tell their story and have an influence on the final outcome. In contrast to the experiences of the victims in the mediation sample, Smith records that the court victims reported having little opportunity to participate in the process. So victims in the mediation sample reported higher rates of participation than the court victims. Similarly, victims in the mediation sample were more satisfied with their treatment than the court victims. Comparing victims' perception on the immediate outcomes, Smith argues that victims in the mediation sample were more likely to be satisfied with the outcome than those in the court sample.

In Leuven, Belgium, Gustafson (1997) in an address to prison governors presents a case study involving victims of a serial rapist. According to Gustafson the two victims had heard of victim-offender mediation and wanted further information on its process. The two women had been experiencing Post-Traumatic Stress Disorder (PTSD) for nine years, and had expressed a definite need to meet their offender. On their expectations for meeting their offender, Gustafson notes that one of the victims describes her reasons to participate thus:

To write the final chapter on this era of my life I will need to meet with him, face-to-face. I have dozens of questions that were never touched on in the justice process. I need to ask “why?” and “why me?” and I need to be open to his humanity, his pain, to see if we can find some new freedom for us both (...) “Just relax”, he said, “and you will survive”. Well someone didn’t survive-my twins lost their lives (victim was pregnant with twins during the assault and had a miscarriage a few weeks following the assault). I want to see how he responds to the news of the loss of my babies. I want him to have to deal with my pain and his responsibility for the consequences (Gustafson, 1997:11).

On the experiences of the victims’ participation in mediation, Gustafson (1997:12) reports that both victims expressed being able to move on with their lives, and that it was a therapeutic experience. As one of the victims put it, ‘I have my music back’. What this meant according to Gustafson is that during the attack, the victim had accidentally turned on the clock radio and after the attack she was unable to listen to any type of music broadcast, whether it was on the radio or in the background in a supermarket, she would have to leave (because it reminded her of the rape). According to the author, the victim mentioned that following the mediation, she was being able to sleep for the first time between 3:00 and 5:00 o’ clock in the morning (because the rape attack occurred at 4:00 a.m.). This is an indication that her fears had been relieved following the meeting with the offender.

In spite of the above significance of direct mediation for victims of crime, a study that considered three types of restorative cautioning schemes in Northumbria, Thames Valley, London and South Yorkshire (UK) conducted by Hoyle, Young and Hill (2002) found that about 75% of the participating victims declined an offer to meet the offender when

given a choice between a ‘direct mediation’ and ‘indirect mediation’. And the UK Home Office (2004) in its ‘Best Practice Guidance for Restorative Justice Practitioners’, discourages the use of restorative justice process in the handling of domestic violence, and serious cases. But it appears that even among the serious crimes, some victims feel the need to meet their offender. However, it is true that compared to less serious crimes, there are relatively few restorative justice programmes available for victims of violent and serious crimes. Nevertheless, the available evidence reviewed herein does suggest that there is a group of victims of violent crimes who are interested in restorative justice programmes. These victims, like the victims of less serious crimes, thus appear to want to confront their offender with the consequences of his or her offending behaviour, to ask the ‘why?’ and ‘why me?’ questions, and to seek an apology. For these victims, one could argue that meeting the offender can provide them with psychological healing, and enable them to put the ugly event behind them and move on. The programmes must however, be highly sensitive to the victims’ needs such as pre and post-mediation consultations, opportunity for direct or indirect mediation, exchange of letters or video conferencing with the offender when and where necessary. All in all the studies reviewed in this chapter show that there is a group of victims of violent crimes (including domestic violence and sexual assault) who are interested in the restorative justice process and, as such, the issue merits further exploration and research.

Restorative Justice and the Criminal Justice Professionals

Following the fact that restorative justice could be used in some jurisdictions with serious criminal matters, this section of the thesis reviews evidence on views of criminal justice professionals on restorative justice initiatives globally, and from South Africa in particular. This is important because the success of any restorative justice approach depends not only on the support of the victims and offenders involved in the incident, but also on the criminal justice officials who receive and process cases that the public report. In most instances, restorative justice options are utilised at some stage after a suspect has been arrested – implying that the understanding and support of police, prosecutors, magistrates and judges is essential if they are to propose restorative options for the accused.

In the case of diversion, for example, prosecutors are responsible for deciding which cases to divert and which to prosecute. It is thus essential that they know and understand the philosophy of restorative justice, the practice of diversion and its value to young offenders, their families, and their communities. A similar situation applies to victim–offender mediation, in which cases are referred by prosecutors and police, among others. In the victimological evidence reviewed above, most cases were referred by prosecutors, and once the mediation process was complete, the prosecutor was responsible for making the ultimate decision about whether to accept the agreement reached between the parties, or take the case to trial. Therefore, the first step towards proposing any restorative justice programme in any nation (including Nigeria) is to assess existing perceptions of restorative justice among criminal justice officials. So evidence reviewed here are to be compared with the opinion of criminal justice professionals in Nigeria which this study investigates.

In the United Kingdom for instance, Williams (2003) notes that in spite of the government’s commitment to ‘build in restorative justice at all stages of the criminal justice system, not all of the police stations in the three pilot areas [for the conditional adult caution] intend to use a restorative justice model’. Citing the work of Lord Justice Woolf (2001), Williams however, argues that senior judges have praised the potential benefits of restorative justice, both in public speeches and in sentencing decisions, some of which have (even) given offenders a sentencing ‘discount’ for undertaking voluntary reparation to their victims. He further notes that the idea of restorative justice has repeatedly been officially approved at a senior level with endorsements over the past few years, in writing and in published speeches, from the Home Secretary, his junior minister, the Lord Chief Justice and senior representatives of the crown prosecution service, the Department for Constitutional Affairs and the police service. But in spite of this development, Williams (2003) in his paper ‘recent legislation on offenders and victims of crime: restorative justice or co-option?’ notes that politicians are however, terrified of being accused of being ‘soft on crime’, so every restorative justice initiative is accompanied by some elements of compulsion

and what he calls ‘tough rhetoric’. By this, he argues that government’s commitment to restorative justice could be seen as part of a strategy of ‘responsibilization’ (Garland, 2001:124) because the idea of restorative justice is endorsed at a rhetorical level and then undermined in terms of practical implementation. The idea of ‘responsibilization’ according to Garland (2001:124) is however, to spread responsibility for crime control onto agencies, organisations and individuals that operate outside the criminal justice system and persuade them to act appropriately. In Nigeria, this idea of ‘responsibilization’ is beginning to show its head as restorative justice advocacy become stronger with supports from former Chief Justice of Nigeria (Honourable Justice Mohammed Uwais) amongst others, for government funding of projects. Some Justices of the Federal High Courts and National Judicial Institute while accepting to partner with restorative justice advocates observed that it is not only the government of Nigeria that should be saddled with the responsibility of funding conflict resolution initiatives but Non Governmental Organisations as well (see Babalola, 2007). Whereas this is not generally a bad initiative, what however, does this strategy portend for ‘funding’ effective restorative justice projects; given the fact that success of any restorative justice approach is dependent on the will of government and the appropriate criminal justice agencies to sponsor and refer cases for mediation?

Meanwhile, in an evaluation of Youth Conferencing service in Northern Ireland Campbell *et al* (2006) had interviews with criminal justice stakeholders linked to the youth conferencing programme. The research team interviewed four police officers involved with youth conferencing. All of the police officers Campbell *et al* (2006) reported expressed enthusiastic support for the restorative principles that underpinned the youth conferencing programme. All of the officers believed that the youth conferencing helped the young offender to appreciate the true impact of the offence, and most thought it was helping to prevent re-offending. One officer according to the authors felt that conferencing could ‘create a sense of ownership for the crime’ and bring about a ‘realisation factor’ because according to the officer ‘court is a joke for juveniles. The solicitor [lawyer] does everything and they do not have to think or reflect about what they

have done and they can get away without saying a word. The conferencing system is far better in getting the child to think about what they have done' (Campbell *et al*, 2006:119). However, all the four officers the authors argued mentioned that 'there would be a small minority of cases that would be unsuitable for conferencing, either because the offences are extremely petty, or because the juveniles are habitual offenders' (Campbell *et al*, 2006:119). This view however is of concern to two conferencing co-ordinators who expressed some concern about the attitudes of certain individual police officers who tends to 'write certain kids off' before the commencement of conferencing.

Similarly, all the youth conferencing co-ordinators according to the authors perceived a very clear difficulty in relation to the way programme plans/agreements were dealt with by a magistrate at the Youth Court in Belfast. Concerning their experiences with magistrate at the Youth Court the co-ordinators comments:

The magistrate has their own views and feels very strongly about them. The worst thing is that the magistrate won't use their powers to vary the plans[agreements].If a magistrate does not like it, the whole thing get thrown out...Some magistrates seem to see conferencing in a very different way(Campbell *et al*, 2006:125).

Many of the co-ordinators according to the authors also complained about the attitudes of solicitors (lawyers).The co-ordinators believed that there was some degree of reluctance within the legal profession to accept both the philosophy and practice of youth conferencing. One commented that solicitors were keen to 'make as much money as possible' and 'thus had no interest in cases being resolved quickly' (Campbell *et al*, 2006:126). This statement further confirms the researcher's argument in the theoretical discourse in chapter two of this thesis on the need for "de-commodification" and "de-mercantilisation" of crime and victimisation, and also supports Ojo-Lanre's (1995:5) argument that cases in some courts in Nigeria are often "privatised and commercialised" by agents of the criminal justice system. Another co-ordinator it was reported by Campbell *et al* (2006:126) notes that youth justice was seen as a 'low priority' within the legal profession and so it was 'usually young and relatively inexperienced solicitors that attend the Youth Court'. Campbell *et al* (2006) thus suggest that the introduction of a

system of specialist ‘youth advocates’, similar to what is practiced in New Zealand, could overcome the problem of the legal profession not wanting to embrace restorative based reforms in criminal justice system.

In spite of the above complaints against some magistrates and lawyers by youth conference co-ordinators, all of the magistrates interviewed by Campbell *et al* (2006) support the general principles of restorative justice and thought it was a good idea in theory, particularly as it is supposed to make offenders take responsibility for their actions and can help them understand the impact of their actions on victims. On the part of Public Prosecution Service (PPS), Campbell *et al* (2006) report that prosecutors in the PPS office were keen to make it clear that the PPS strongly supports the recommendation of the Northern Ireland Criminal Justice Review that prosecutors should be involved in the decision to refer cases to youth conference. The PPS the authors note supports the decision taken by the Criminal Justice Review implementation team that prosecutors become responsible for all diversion decisions.

The conflict of opinions between some of the ‘core’ criminal justice stakeholders and the restorative justice co-ordinators in the above study demonstrate clearly what Hoyle (2003) calls ‘defensive solidarity,’ because each agency fear the usurpation of its function. So the researcher would suggest that where restorative justice programme operates within the criminal justice system a clear role definition among agencies and inter-agency cooperation should be encouraged if the programme is to succeed.

In the United States, Umbreit (2001:230) interviewed a total of forty-five criminal justice professionals including judges, police officers, probation officers, crown attorneys, and defence lawyers at four sites in the USA to ascertain their perceptions and level of support for restorative justice. Umbreit (2001) found that slightly under two-thirds (60%) of the criminal justice officials interviewed had themselves referred cases to their local restorative justice programmes in their jurisdiction. This Umbreit argues reflects both direct experience and more general perceptions about the role of restorative justice programmes to these officials. Umbreit (2001:231) further argues that the initial response

of criminal justice officials in the USA to the idea of restorative justice upon first learning about it was moderately positive. He argued that 71% of the thirty respondents interviewed were supportive of the concept from the beginning. Some of the respondents according to Umbreit (2001:231) comment that 'we criminalise far too much behaviour' and 'could not imagine anything that would be more of a learning experience for both the victim and the offender'. On the perceptions of criminal justice officials regarding whether or not restorative justice hold offenders accountable, Umbreit reported that 93% of the respondents believed that offenders could be held accountable. Respondents' comments included 'Yes, there is very little real accountability in the revolving door of our criminal justice system [as compared to restorative justice]' and 'it is harder to face the victim than to get shuffled through the criminal justice system' (Umbreit, 2001:231). When respondents were asked whether, if they themselves were a victim of crime, they would elect to participate in restorative justice rather than criminal prosecution Umbreit found that thirty-two of the respondents (71%) said 'yes' while three respondents (7%) said that 'it would depend on the circumstances and nature of the crime'. Umbreit (2001:231) however found that many of the respondents felt that 'the crown needs a more enlightened attitude about restorative justice [because] most defence lawyers do not know much about it'.

In the Japanese criminal justice system Yoshida (2003:186-187) found some contrasting but interesting views as he surveyed the opinion of the criminal justice professionals regarding the 'aims and function of the criminal justice system'. He found that almost all police officers (99.3%), public prosecutors (100%), attorneys-at-law (90.3%), judges (100%) and probation officers (89.7%) answered with 'yes' with regard to 'punishment of offenders' as aim of the criminal justice system. When they were asked with regard to 'truth-finding' as an aim of the criminal justice system, almost all police officers (99.2%), public prosecutors (97.3%), attorneys-at-law (93.1%), judges (96.2%) and probation officers (100%) answered with 'yes'. But what the respondents however forgot to understand is that often there can be no 'truth telling' in the conventional criminal justice system, compared to restorative justice because most defence lawyers coach their clients on how to make statements that would assist them in winning their case (After all which

offender wants to go to prison and which defence lawyer wishes to lose his case in court anyway?). Although the Japanese criminal justice system is the product of a unique culture, and therefore may not be possible to generalise or apply its experience to Europe or Africa directly, the researcher is however arguing that any criminal justice jurisdiction (including the Japanese system) that wishes to get 'truth-telling' from offenders should rethink its criminal justice policy towards the restorative justice paradigm.

On 'conflict resolution' between offender and victim as an aim of criminal justice system, Yoshida (2003:186-187) found that less than half of the police officers (40%), public prosecutors (30.6%), attorneys-at-law (14.5%), judges (19.6%) and probation officers (48.5%) answered with 'yes'. Similarly, when the respondents were asked on 'compensation' to victims as an aim of the criminal justice system, less than half of the police officers (40.9%), public prosecutors (20.0%), attorneys-at-law (17.7%), judges (7.7%) and probation officers (48.6%) answered 'yes'. The low response rates as regard 'conflict resolution' between victim and offender and 'compensation' for victims as aims of criminal justice system in the above study justify the theoretical arguments by restorative justice advocates that a conservative and conventional criminal justice system has no interest of victim's harmony or restoration and offender reformation, because the more crime and victimisation the society generates the more "business" for the crime control industry. Perhaps that is why it could be argued that the conventional criminal justice system is not truly interested in victims' welfare, quick dispensation of justice, crime prevention and crime control.

In South Africa, Naude and Prinsloo (2005) undertook a survey of magistrates' and prosecutors' views on restorative justice during the period September 2001–April 2002. The research was conducted at the magisterial offices of Pretoria, Pretoria-North, Soshanguve, Ga-Rankuwa, Temba and Mamelodi. When Naude and Prinsloo ask what they thought the main aims of restorative justice are, most respondents (81%) said it was to sensitise the community to prevent crime through positive interventions. Other objectives selected by a vast majority of respondents according to the authors were: showing a balanced concern for the victim and the offender by

involving both in the criminal justice process, attending to victims' needs, and making offenders aware of the consequences of their actions to enable them to make amends.

The respondents the authors note were much less sure about whether the main aim of restorative justice is to focus on the harm suffered by the victim rather than on the transgression of laws, to allow the victim an opportunity to view the offender as a person rather than a stranger who has committed an offence, or to avoid the escalation of legal justice and the associated costs and delays.

When respondents were asked whether restorative justice is a sentencing option Naude and Prinsloo (2005) found that 'roughly two thirds of the prosecutors and magistrates interviewed agreed that restorative justice is an appropriate sentence' because the courts must consider the victims' needs by creating an opportunity for them to experience restitution and healing. Although most supported it as a means of attending to the needs of victims, the authors noted that 46% said restorative justice was appropriate only when proper guidelines and an ethical code of conduct were in place.

Overall, the authors note that 'respondents were far more uncertain about restorative justice as a sentencing option than they were about the aims of the approach'. Although most respondents according to Naude and Prinsloo, thought it would assist victims with restitution and healing, few prosecutors and magistrates the authors added believed that 'restorative justice is not an appropriate sentencing option for several types of crime', including: offences in which the victim and offender are known to each other, serious property offences, crimes involving children, serious assault, offences where victim and offender are strangers, sexual offences, and crimes involving victim and offenders of the same race .

These findings was surprising considering the fact that the perceived success of the South African Truth and Reconciliation Commission suggest that, at the time of the survey, prosecutors and magistrates in South Africa were supposed to be favourable to the restorative justice paradigm. Or where the magistrates and prosecutors where

the research was conducted demonstrating ‘defensive solidarity’ perhaps? Or do the SATRC have no positive outcomes and impressions on these professionals as might be expected? Arguably, it is possible that restorative justice was largely seen by the respondents as an alternative to the usual court process, rather than providing sentencing options. This would explain the high proportions saying they are ‘uncertain’ about its use as a sentencing option. The results thus indicate the need for prosecutors and magistrates to be made aware that the principles of restorative justice can be applied equally well at a pre-trial, pre-sentence and post-sentence stage. This knowledge is imperative as the findings indicate a high level of ‘uncertainty’ among respondents about how to apply restorative justice at the sentencing stage.

Furthermore, when the respondents were asked about the possible outcomes of restorative justice, the authors note that most respondents agreed that restorative justice could contribute to community building (83%); that it could make the offender aware of the harm caused to the victim (81%); that it holds the offender accountable for his or her behaviour (77%); that it involves community members in the criminal justice process (73%); and that it contributes to the offender accepting responsibility to set things right (70%). Considering that these are all key principles and objectives of restorative justice, the fact that a majority of prosecutors and magistrates agree that these are likely outcomes, is significant (Naude and Prinsloo, 2005).

Respondents were, however, less certain about specific applications of restorative justice and the impact on the court process. For example, Naude and Prinsloo (2005) indicate that 39% were uncertain about whether a restorative justice approach made it possible for indigenous law and Roman-Dutch law to co-exist, and 32% were unsure about the use of community courts to alleviate case backlogs within the criminal justice system. These uncertainties Naude and Prinsloo argue probably reflect the lack of information and understanding regarding the approach in this sector at the time of the survey.

Nevertheless, Naude and Prinsloo report that it is significant that only 35% of

respondents thought that restorative justice would result in the downscaling of the criminal justice process because it is a 'soft' way of dealing with crime. Similarly, only 36% believed that restorative justice could reduce the decision-making powers of the judiciary. These views the authors argue suggest that prosecutors and magistrates are likely to be receptive to the benefits of restorative justice. Advocates of the approach thus have an opportunity to increase awareness and use of its applications in the court process.

To test whether there are problems relating to acceptability of a restorative justice approach, the authors present respondents with a list of statements that reflect common concerns about restorative justice, and asked whether they agreed, disagreed or were uncertain about them. The finding shows that prosecutors and magistrates were largely uncertain about many of these 'problems' (Naude and Prinsloo, 2005). The exceptions the authors added were 67% of the respondents who agreed that inadequate community resources could render restorative justice ineffective, as well as 55% who thought offenders may see it as an easy option to avoid imprisonment, and 52% who agreed that restorative justice could create unrealistic expectations in victims. Naude and Prinsloo however argued that direct experience on the part of the respondents with restorative justice applications might have been limited at the time of the study, making it difficult for respondents to accurately answer the question. Despite this, the authors argue that the fact that respondents correctly identified some of the problems listed in the questionnaire as real challenges in effective restorative justice practice indicated a significant level of understanding about the issues.

When respondents were asked whether they had ever applied for or recommended restorative justice options in court, the majority of the respondents (61%) answered 'yes' with regard to community service sentences and diversion for young offenders (55%). Family group conferencing was also recommended by only (20%) of the prosecutors and magistrates, and victim-offender mediation by (17%). Only (7%) of prosecutors and magistrates interviewed had made use of compensation orders

The positive results with regard to community service and diversion the authors argue are largely to be expected, because in South Africa ‘community service is provided for both as a condition of a suspended sentence as well as part of correctional supervision’, and diversion has become well established in South Africa at most of the main courts in the country. Furthermore, the authors argued that greater access to these services by some courts in the sample could be one explanation.

The authors note that although a minority of respondents indicated using Family Group Conferencing, and Victim-Offender Mediation, the percentages using victim-offender mediation and family group conferencing were surprisingly high (20% and 17% respectively). The authors thus note that the results are significant; particularly because ‘these programme options provide an excellent way of “operationalising” the value and aims of engagement and inclusion that underpin the restorative justice approach’ (Naude and Prinsloo, 2005:5). This is important because an outcome from a victim–offender mediation detailing restitution and community service that is included in a sentence is very different from a similar sentence that is imposed by the court without any involvement by those affected.

Although many respondents in the South African study under review were unsure about several of the statements put to them in the survey about the restorative justice approach, the level of support for restorative justice was generally higher than expected, given that the concept was fairly new in Africa at the time of the study. For example, nearly two thirds of the respondents agreed ‘that restorative justice was an appropriate sentence’ and that ‘the courts must give meaningful attention to the needs of the victim’ (Naude and Prinsloo, 2005:5). The overwhelming majority of respondents also identified the most important positive outcomes of restorative justice such as ‘community building, making the offender aware of the harm caused to the victim, holding the offender accountable for his or her behaviour, and involving those affected in the criminal justice process’ (Naude and Prinsloo, 2005:5).

The receptiveness among respondents towards restorative justice in South Africa is

therefore quite significant. However, the results also indicate that magistrates and prosecutors need to be trained about the principles, objectives, applications and effectiveness of restorative justice, as there were many misconceptions and uncertainties about various aspects of the approach. This was to some extent, according to the authors acknowledged by respondents, 46% of whom agreed that restorative justice is an appropriate sentencing option provided that proper ethical guidelines and protocols are in place.

Some of these misconception about restorative justice applications include the fact that contrary to local and international experience, respondents were wary of using restorative justice sentences for a wide range of cases, including among others, those involving sexual offences, repeat offenders, and serious assault (be that as it may, these reservations are also shared by many in other countries). The respondents also demonstrated a lack of knowledge about victims' views of the approach: one third agreed that meeting the offender would only increase the victim's level of fear and emotional distress, and only a quarter agreed that reparation in terms of the offender making restitution to the victim was realistic. A similar proportion of prosecutors and magistrates expressed the view that victim-offender mediation would contribute to further victimisation of victims, while over a third thought many victims may not be suitable or willing to participate in such a process. These arguments to some extent are however, not usually the case as a number of international studies (some of which are reviewed in this chapter earlier) show that restorative justice sentences are widely used for males and females, young people and adults, across racial and ethnic groups, for first and repeat offenders, as well as for minor and serious violent and property crimes. The findings of this study also contribute relatively to these debates.

CHAPTER 4

METHODOLOGY

Following the theoretical and empirical debates and evidence in the previous chapters, this research investigates the opinions of victims of crime and criminal justice professionals in Nigeria with regards to acceptability or otherwise of restorative justice as alternative to prosecution in Nigeria where the reforms of the criminal justice system has become an issue at the time of research. This chapter thus discusses the methodologies used in investigating the research question. The researcher justifies why the methodologies used were chosen, and why other methods were not used. The philosophical dichotomy between the use of ‘qualitative’ and ‘quantitative’ research methodologies is discussed specifically considering the epistemological arguments. The researcher also describes the strengths and limitations/weaknesses of the methodologies used. The description of the research subjects, ethical issues considered in this research and the sampling techniques used by the researcher are also discussed herein.

Preamble

The basic goals of this research include: gathering of facts; writing field reports; arriving at a reasonable conclusion and (where necessary) advising on policy issues relating to criminal justice administration in Nigeria (in particular) and the rest of the world in general. The ability of this researcher to be able to carry out the above functions clearly is dependent to a large extent on the choice and understanding of the research methodology that would be able to answer ‘how?’ and ‘why?’ the respondents say what they say. So the researcher was motivated to doing some element of qualitative research, as opposed to purely quantitative research. This motivation comes from the observation/belief that rich descriptions of the social experience of the research respondents (victims and criminal justice professionals) are valuable for this study and moreover, if there is one thing which distinguishes humans from the natural world, it is our ability to talk (which could in fact be achieved through interviewing).

Philosophical basis of research methodology

According to Krauss (2005:758) research methodology is based on the epistemological philosophy of knowledge of 'how we come to know what we know'. It poses the questions of: What is the relationship between the knower and what is known? How do we know what we know? And what counts as knowledge? (Krauss, 2005:759). The answers to these questions Krauss argues lie in understanding the differences in epistemologies among research paradigms which begins primarily as a philosophical exercise of 'whether there is one knowable reality or there are multiple realities of which some individual knowledge can be acquired' (Krauss, 2005:759). Krauss notes that in the positivist paradigm, the object of study is independent of the researcher; knowledge is discovered and verified through direct observations or measurement of phenomena (empiricism); facts are established by taking apart a phenomenon to examine its component parts whereas, in alternative view, according to the naturalists or constructivists, knowledge is established through the meanings attached to the phenomena studied (i.e. researcher interacts with the subjects of study to obtain data). Inquiry thus changes both researcher and subject and knowledge is context and time dependent (Cousin, 2002).

Similarly, Denzin (2000:8) argues that qualitative research method emphasizes the qualities of entities and processes and meanings that could not be experimentally examined or measured (if measurable at all) in terms of quantity, amount, intensity, or frequency whereas quantitative research methodology emphasises the measurement and analysis of causal relationships between variables, and not processes. In the same vein, Lofland and Lofland (1996) argue that qualitative research methodology has primary considerations that 'face-to-face interaction' is the fullest condition of participating in the mind of another human being (research respondent), to understand not only their words but the meanings of those words as understood and used by the individual. The authors further suggest that researchers must participate in the mind of another human being (research subject) in order to acquire such 'social knowledge'. Thus Krauss (2005) for instance, argues that what has a common meaning to a group of people may have a

unique meaning to another individual member of the group (e.g. the conceptual understanding and acceptability or perception of restorative justice may have a unique meaning to victims and/or criminal justice professionals participating in this study depending on their level of victimization and/or socio-cultural orientation). Thus it would be wrong to generalize experiences (victimization experiences for instance) since understanding of meaning has to do with the construction of the meaning process within the individual subject, and the many different factors that might influence it. Qualitative research methodology Krauss argues is the only appropriate approach that has the unique quality to particularly identifying the contributing factors to an individual's (or groups') unique meaning. Hence, Kaplan and Maxwell (1994) argue that qualitative research methods are designed to help researchers understand people and the social and cultural contexts within which they live. Kaplan and Maxwell (1994) further argue that the goal of understanding a phenomenon from the point of view of the participants and its particular social and institutional context is largely lost when textual data are wholly quantified.

Despite these assumed differences between quantitative and qualitative research methodologies, Krauss (2005) argues that the heart of the quantitative-qualitative debate is philosophical and not methodological, because philosophical assumptions or a theoretical paradigm about the nature of reality Krauss argues are crucial to understanding the overall perspective from which a study is designed and carried out. A theoretical paradigm Krauss further argues is thus the identification of the underlying basis that is used to construct a scientific investigation, or, what Bogdan and Biklen (1982:30) call 'a loose collection of logically held assumptions, concepts, and propositions that orientates thinking and research' or what Guba and Lincoln (1994: 105) define as the 'basic belief system or world view that guides the investigation'. Thus, the methodology chosen for any research Cavaye (1996) argues is dependent on what the researcher is trying to investigate rather than a commitment to a particular paradigm. Hence, the methodology employed for any research must match the particular phenomenon of interest, because different phenomena may require the use of different methodologies. Falconer and Mackay (1999) thus suggest that by focusing on the

phenomenon under investigation rather than methodology, researchers are more likely to select appropriate methodologies for their enquiries.

Because of the significance of the above epistemological arguments to the investigations carried out in this research the possibility of doing a wholly quantitative or wholly qualitative research was rejected as it would not have provided insight into why the respondents say what they say or optimize the data collection process for a fair generalization to the larger population (which of course is important for any exploratory research such as this, and success indicator for any social policy decisions). To be able to balance these goals the researcher thus use qualitative and quantitative methodologies to optimize the data collection process, and /or to increase both the breath and width of data collection that would tap into the richness of individual respondents' experience, along with the broader understanding and knowledge levels of large groups of respondents.

Moreover, some researchers do either quantitative or qualitative research work, and some researchers suggest combining one or more research methods in one study -call triangulation (Denzin, 1989; Kaplan and Maxwell, 1994). Similarly, Bottoms (2000) argues that qualitative researchers could be assisted by the collection of quantitative data, or as Tashakkori and Teddlie (1998) argue that qualitative and quantitative methodologies are compatible, and can operate most effectively in partnership (also see Stout, 2005:99). Within a critical realism framework, both qualitative and quantitative research methodologies are thus seen as appropriate for researching the underlying mechanisms that drive actions and events. Thus with realism, the seeming dichotomy between 'qualitative' and 'quantitative' methodologies is therefore replaced by choosing an approach that is considered appropriate given the research topic of interest and level of existing knowledge pertaining to it (see Krauss, 2005).

Why use 'methodological triangulation?'

According to the realism argument discussed above, the realist paradigm was discussed as a "middle ground" between the poles of positivism and constructivism. So in realism, the means to determine the reality of any social phenomenon (such as those under

investigation in this study) is through the triangulation of processes, which include elements of both positivism and constructivism rather than solely one or the other.

Denzin (1989:237) therefore describes and differentiates ‘methodological triangulation’ into two subtypes: ‘within-method’ and ‘between- methods’. An example of the ‘within-method’ triangulation according to Denzin is the use of different subscales for measuring an item in a questionnaire. For instance, respondents would be asked a question and given options of ‘yes’ or ‘no’, and the same question would then be reversed in another subscale and respondents are given options of saying for instance: ‘strongly agree’, ‘agree’; ‘disagree’ and ‘strongly disagree’. This form of triangulation is not the one used in this study but the ‘between-method’ triangulation.

The ‘between-method’ triangulation is the combination of the questionnaire technique with a semi-structured interview technique. This form of triangulation calls ‘between-method’ triangulation is what the researcher use in this study to investigate the opinions of respondents in Nigeria. For this research in particular, 15 respondents volunteered for a personal face to face interview out of the 151 final and valid responses used in this study whereas, the remaining number of respondents (140) in this study gave their feedback in a self- completed questionnaires. However, it is important to note that the same questions in the questionnaires are the same used for those in the face to face interview except that reflexology and expressions at interviews are observed in the face to face interviews while these factors are not possible in the self-completed questionnaires. This approach according to Denzin (1989:236) remains the ‘soundest strategy of theory construction’, and an ‘approach for further grounding the knowledge obtained with qualitative methods’. According to Denzin (1989:236), ‘grounding’ here does not mean to assess results but to ‘systematically extend’ and ‘complete the possibilities of knowledge’. This argument is thus relevant to this research since this study is indeed the first opinion survey research on restorative justice in Nigeria which hopefully would contribute to the body of knowledge globally.

Furthermore, the researcher’s choice of a combination of an element of qualitative

research method and quantitative method in this study is consistent with the argument of Flick (1998). According to Flick (1998:2) qualitative research method is of specific relevance to the study of social relations, owing to the fact of 'pluralisation of life worlds'. This pluralisation according to Flick (1998:2) is due to the 'new obscurity', the growing 'individualisation of ways of living and biographical patterns' and the dissolution of the 'old social order' into the new diversity of milieux, subcultures, lifestyles and way of living'. Flick thus further argues that this pluralisation requires a new sensitivity to the empirical study of issues. Hence he notes that advocates of postmodernism have argue that the 'era of big narratives and theories is over' thus, 'locally, temporally and situationally limited narratives are now required' (Flick, 1998:2).

With regard to the pluralisation of lifestyles and patterns of interpretation in modern and post-modern society, Flick argues that Blumer's statement that 'the initial position of the social scientist and the psychologist is practically always one of lack of familiarity with what is actually taking place in the sphere of life chosen for study' (Blumer, 1969:3 cf Flick, 1998:2) becomes relevant once again but with new implications. That is, rapid social change and the resulting diversification of life worlds are increasingly confronting social researchers with new social contexts and perspectives (such as restorative justice).

Flick (1998:2) therefore argues that this social change is thus new to social researchers such that their traditional deductive methodologies (i.e. deriving research questions and hypotheses from theoretical models and testing them against empirical evidence) are failing in the differentiation of objects. Thus, researchers (including this one) are increasingly looking to make use of inductive strategies (which emphasise that models should emerge from data itself) instead of starting from theories and testing them. So 'sensitizing concepts' (such as the one under investigation), Flick suggests are what is required for approaching social contexts to be studied. However, the researcher wishes to state that it is important to note here that contrary to widespread misunderstanding, these concepts themselves could be influenced by previous theoretical knowledge. But the only difference is that theories or models are developed from research findings. Hence, the argument of qualitative methodologies is that the 'study of subjective meanings and

everyday experience and practice' is as essential as 'the contemplation of narratives and discourses' (Flick, 1998:2) as evident in quantitative/deductive research methodologies. However, quantitative/deductive research methodologies pay particular attention to developing quantitative and standardised methods for the purposes of 'clearly isolating causes and effects, to properly operationalise theoretical relations, to measure and to quantify phenomena, and to create research designs allowing the generalisation of findings and to formulate general laws' (Flick, 1998:3). Though using statistical method within this research is necessary in order to understand what possible alternatives might exist for creating measurement systems commensurate with the phenomena that are the focus of this research, the researcher does not want to pursue a purely quantitative method that is not commensurate with the research phenomena to be addressed in this study. However, the argument on the advantage of quantitative methods too is relevant in exploratory research such as this hence the use of some element of quantitative data.

Chosen Methodologies

Anchoring on the above arguments the researcher carefully chooses the 'methodological triangulation' model for the primary research data, from the several research methods in social research. That is, this researcher uses both the 'qualitative and quantitative' research methods in conducting this research: combining the use of interviewing techniques and questionnaire schedules to find out the facts about proposing the use of the restorative justice paradigm in the Nigerian criminal justice system from 'victims of crime' and 'criminal justice professionals'.

Two versions of Questionnaire/Interview Schedules (QIS) using semi-structured/open ended questions are designed for this study. The first is the Victims Questionnaire/Interview Schedule (VQIS) which is designed primarily to be administered with the 'victims of crime' respondents, and the second is the Professionals Questionnaire/Interview Schedule (PQIS) which is designed to be used with the criminal justice professionals. The content of the Victims Questionnaire/Interview Schedule (VQIS) is designed to test some 'Core Theoretical Domains' (CTD) in restorative justice and victimology such as: victims' conceptual acceptability of restorative justice (when

restorative justice was defined to victims using Tony Marshal's (1999) model), choice of model (community based model versus criminal justice based model are provided to respondents as options), types of crime suitable for restorative justice; offender characteristics; victims' real needs/expectations in restorative justice, types of victimisation and other demographic variables. The content of the Professionals' Questionnaire/Interview Schedule (PQIS) is designed to test the professionals' conceptual knowledge and their views about the acceptability of restorative justice (when restorative justice was defined to them using Tony Marshal's model), offence type suitable for restorative justice; preferred stages of diversion; and other variables.

This research therefore is basically non-experimental research. The emphasis in this study is on exploration and description in order to understand what lies behind a phenomenon (victims and criminal justice professionals' opinions on restorative justice in Nigeria) about which little is known at the time of research. It operates on the premise that 'understanding emerges most meaningfully from an inductive analysis of open-ended, detailed, descriptive, and quotational data gathered through direct contact with participants' (Patton, 1990:119). This research is thus an exploratory form of research (descriptive) carried out primarily in different parts of Nigeria where no previous work on restorative justice opinion surveys has been done. The outcomes of this study therefore can form the basis for further investigations in this body of knowledge in Nigeria.

The Questionnaire Method

Asking questions is an obvious method of collecting both qualitative and quantitative information from research subjects. Most social researchers often choose to interview the respondent or ask respondents to complete the questionnaire (Akinkoye, 1994), or it can even be done by giving them questionnaires which let them say what their meanings are or choose between meanings given to them as possibilities (Krauss, 2005). Using the questionnaire thus enables the researcher to organise the questions beforehand and receive replies without actually having to talk or personally interview every respondent. So, one significant feature of using the questionnaire to the researcher is its

impersonality, because the questions are pre-designed/formatted. They do not change according to how the replies develop, and they are the same for each respondent, and the researcher posing the questions is remote. Similarly, the responses can be completely anonymous, allowing some probing questions (especially in semi-structured questionnaire) to be asked with a fair chance of getting a true feedback. Another significant feature justifying the choice of this method is that doing survey research in a fairly large country like Nigeria, the questionnaire method becomes expedient because there is no geographical limitation with regard to the location of the respondents: they can be anywhere in Nigeria so long as they can be reached either by post, telephone, or email. Moreover, it is relatively cheaper for the researcher (considering the fact that this study is a self-funded one) in terms of cost of administration, time and the intention of the researcher to solicit data from a fairly large representative sample of the population. It is also important to note that time taken by the respondents reading the questions, checking facts and pondering on the questions before completion tends to lead to a more genuine and accurate data. As a method of data collection, the questionnaire is thus a flexible tool.

However, while questionnaire instruments are relatively cheap and are effective in preventing the personality of the researcher having effects on the results, the researcher does note that they do have certain limitations. For instance, there are problems in gaining the required response from illiterate respondents, especially as the questionnaires tend to be answered and returned by the more literate groups of the research populations (see Akinkoye, 1994). The researcher was mindful of this and was prepared to use face-to-face interview methods to gain access to illiterate respondents if they participate in order to avoid sample bias. Furthermore, in self-administered questionnaires whereby respondents are left on their own to fill in the answers, lack of enthusiasm and undue procrastination very often lead to very low rates of returns of completed questionnaires (Akinkoye, 1994). Experience from the pilot test has also shown that respondents leave some questions unanswered because the researcher is not there to urge them to provide answers. On the other hand, while it is common to have all questions answered by respondents, falsifications do frequently occur, either because of the desire to “impress” the researcher or for other reasons. Thus Akinkoye (1994) argues that there is also the

probability for respondents of low status to give false description of their academic qualifications or occupations (this could happen mostly in research where the researcher is female or where females are used to administered questionnaires because of the desire of male respondents to impress the female interviewer). Closely related to the above argument is that in self-administered questionnaires the researcher is not sure about the degree of independence of the respondents who returned completed questionnaires because their friends, relatives and/or other persons could have been present while completing the questionnaire. These people might influence the answers given. In fact, people around the respondent could dictate answers to him/her if they know the answers. In other cases, busy people like judges and magistrates who are part of the research population in this study might instruct their secretaries to complete the questionnaires for them.

Experience from the pilot test (see reliability and validity section) has also shown that the self-administered questionnaire method involves more work and walk in the sense that follow-up reminders must be sent out until a good proportion of respondents return the questionnaires. And sending out several reminders in terms of letters, phone calls, and, or visitations costs time and money.

In spite of these identified problems with a self-administered questionnaire, it is however preferred by some respondents who have no time for a face-to-face questionnaire administration or interview, and/or those who are shy to answer questions from a stranger (researcher). Moreover, experience has shown that the highly or well educated people prefer to answer the questionnaires in writing or in “their own words” for fear of their opinions or views being wrongly documented, misrepresented or misinterpreted by the interviewer or transcribers because as a popular adage say “words put differently make different meanings and meanings put differently make different words”. However, this issue is handled by the researcher in this study (see the ‘reliability and validity’ section).

The Interview Method

Considering the fact that the questionnaire method would not be suitable for all the

research subjects in this study the researcher also chose the use of interviewing method. The interview method according to Akinkoye (1994) is very appropriate in largely illiterate populations such as those in developing countries; who might not be able to read or write down their opinion in pencil and paper. More particularly to this study the possibility that some victims of crime would be illiterate is high and also the desire to include illiterate victims of crime (if they participate) to avoid sample bias.

So the researcher's purpose of using the interview method is in accord with Patton (1990:5) who argues that researchers use interviewing 'to find out what is in and on someone else's mind. We interview people to find out from them those things we cannot directly observe'. The appropriateness of interviewing method in this study therefore is to be able to "tap" the feelings, expectancies and opinions of victims of crime who might be participating in this research but would be unable to express those feelings on paper because of their level of literacy. In addition to the above reasons, the strengths of the interview method according to Hughes (2002:210) are located in: face-to-face encounter with respondents; large amounts of expansive and contextual data are quickly obtained; it facilitates cooperation from research subjects; facilitates access for immediate follow-up data collection for clarification and omissions; useful for complex interconnections in social relationships; data are collected in natural settings; good for obtaining data on non-verbal behaviour and communication; facilitates content analysis and triangulation; facilitates discovery of nuances in culture; and is useful for uncovering the subjective side of respondents amongst other factors .

It is important to note however, that to achieve the aforementioned values in interviews/questionnaire methods depends largely on the structuring of the interview/questionnaire schedules, because a poorly structured/formatted interviews might be 'obstructive and reactive; difficult to replicate; data would be open to misinterpretation and subjective to observer effects; and difficult to content analyse' by the researcher, amongst other weaknesses (Hughes, 2002:210). The researcher mindful of the above points uses the semi-structured; open-ended multi-module schedules in the design of the research instruments.

Why use semi-structured; open-ended questions

The use of semi-structured/open-ended interview/questionnaires has attracted interest and they are widely used in both qualitative and quantitative methodological discussions (Flick, 1998:76). Flick argues that this interest is linked to the expectation that the research subjects' viewpoints are more likely to be expressed in a relatively open manner. According to Flick (1998:77), other justifications for the heavy use of this method are that: 'non-direction' is achieved by several forms of questions, because unstructured questions are asked and increased structuring is introduced later during the interview to prevent the researchers' frame of reference being imposed on the research subject's viewpoint. In addition to the 'non-direction' is the criterion of 'specificity' which according to Flick means that the interview questions should bring out the specific elements that determine the impact or meaning of an event for the research subject, in order to prevent the interview from remaining on the level of general statements. Merton and Kendall (1946:552) thus suggest that 'specifying questions should be explicit enough to aid the research subject in relating his/her responses to determinate aspects of the research situation and yet general enough to avoid having the researcher structure it'.

Another important justification of using semi-structured/open-ended questions is what Flick (1998:78) refers to as the criterion of 'range' which aims at securing that all aspects and topics relevant to the research question are mentioned during the research interview. That is, the research subject on one hand should be given the chance to introduce related new topics of his/her own in the interview. On the other hand, the researcher's step by step task to cover the topical issues (what Gray, 2004 calls the 'Zone of Validity') by introducing new topics or initiating changes in the topic is also important. To do this, Flick argues that the researcher should lead back to topics that have already been mentioned but not detailed deeply enough, especially if he/she has the impression that the research subject is leading the conversation away from a topic in order to avoid it.

Another justification for the use of semi-structured/open-ended questions is what Flick (1998:78) calls the 'depth' and 'personal context' on the part of the researcher. By this

Flick means that the researcher should ensure that emotional responses in the interview go beyond simple assessments of 'pleasant' or 'unpleasant'. The goal of this Merton and Kendall (1946:554) argue is to encourage 'a maximum of self-revelatory comments concerning how the research situation was experienced' by the research subject. Flick (1998:79) thus suggests some non-directive style or strategies that researchers could use in doing this, for instance: 'focus on feelings', 'restatement of implied or expressed feelings' and 'referring to comparative situations'.

Additionally, in semi-structured/open-ended questions, Flick (1998:84) argues that 'theory driven, hypotheses-directed questions' are easily asked. The essence of this is that questions could be oriented towards the scientific literature about the topic or asked based on the researcher's theoretical presuppositions. Moreover, if 'concrete statements' and 'context of experiences' about an issue are the aim of the data collection (as is the case in this research), Flick (1998:95) argues that semi-structured/open-ended questions should be considered as the preferable method.

So far the justifications for the choice of methodology chosen for this study have been highlighted by the researcher. However, there are some limitations just like in any research methodologies. For instance, it is hoped that the questions in the research instruments are answered freely by the research subjects, because as Flick (1998:94) argues 'on the way to securing topically relevant, theory-driven and hypotheses-directed questions' (such as this study), some problems do arise in semi-structured method. These problems according to Flick (1998:94) include 'problems of mediating between the input of interview schedule and the aims of research question on one hand, and the research subject's style of presentation on the other'.

One problem that the researcher encounters is the question of if and when to inquire in greater detail and to support the respondent in roving far afield, or when rather to return to the interview schedule when the respondent is digressing. That is, the choice between trying to mention certain topics given in the interview schedule, and at the same time being open to the respondent's individual way of talking about these topics and other

topics relevant for him/her (for instance, respondents in this study often appear to associate the meaning of restorative justice to customary dispute resolution mechanisms in Nigeria). These decisions of moderation, which can only be taken in the interview situation itself, require a high degree of sensitivity (on the part of the researcher) to the concrete course of the interview and the respondent. Additionally they require a great deal of overview of what has already been said by the respondent and its relevance for the research question in the study. Thus Flick (1998) suggests that a permanent mediation and steering between the course of the interview and the interview schedule is necessary by the researcher but Kvale (1996) warns against applying the interview schedule too bureaucratically. This is because according to Flick (1998:94) such bureaucracy might restrict the benefits of openness and contextual information as the researcher sticking too rigidly to the interview schedule might encourage him/her to interrupt the question instead of taking up the topic and trying to get deeper into it. However, Kvale (1996:101) argues that several reasons might tempt the researcher to apply the bureaucratic approach. Such reasons Kvale argues include: the protective function of the interview schedule for coping with the uncertainty due to the open and indeterminate conversational situation; the researcher's fear of being disloyal to the targets of the research (Zone of Validity) because of skipping a relevant question for instance; and the dilemma between pressure of time (due to the researcher's limited time for instance) and the researcher's interest (see Kvale, 1996:101). However, in this study, respondent's association of the meaning of restorative justice to Alternative Dispute Resolution mechanism for instance, is accepted within the Zone of Validity of the concept of restorative justice because although Alternative Dispute Resolution is not necessarily restorative justice, restorative justice is however an Alternative Dispute Resolution mechanism.

What other methods could have been used?

Considering the limitations associated with the researcher's choice of methodologies, other options were considered but rejected. For instance, observation methods-participative/covert observation (Gray, 2004) could have been used by the researcher to ascertain what victims of crime want from their offenders in courts, and /or whether

criminal justice professionals would use restorative justice model in handling cases brought before them. This could have given the researcher first hand and practical data/experience. However, this approach would not have yielded any positive or fruitful data since there are no restorative justice options in the Nigerian criminal justice system at the moment. Moreover, if they are any, few criminal justice professionals would have been using them since according to Adeyemi (1994), judges and magistrates in his study of Lagos and Ibadan judicial districts for instance, are reluctant to use (even) the probation orders that are provided for in the Criminal Procedure Act (CPA). Furthermore, using this approach would have been problematic because it would have entails the researcher travelling to visit different judicial districts in a country of thirty six (36) states (and the Federal Capital Territory, Abuja) with a land mass of about 923,768 sq. km. (356,668 sq. mi.).This obviously would not have been possible for a self funded doctoral researcher.

Similarly, the case study method (Gray, 2004) would have been another possible method to consider. This method would have entails the researcher following a small number of cases through the criminal justice process and asking the criminal justice professionals involved in handling the cases what decisions they would have taken have there been restorative justice alternatives for them to use. Just like in the observation method, this approach would have given the researcher first hand data about how real and/ or live cases are disposed. However, as the researcher has previously stated, it would have been problematic and difficult for the researcher to look out for live/real cases in several thousands of courts in Nigeria, and it would have been difficult also to attend all the court appearances. Moreover, in real or live cases, defence lawyers speak for the victims, so defence lawyers may have prevented their clients (victims) from speaking or discussing their cases with a researcher seeking an alternative to the resolution of dispute.

Hypothetical case scenarios could have also been used for this study. That is, the researcher could have designed hypothetical or fictitious case studies of crime victimisation which would have been described or presented to the respondents and the respondents required to comment or give their opinions about whether such cases would

have been suitable for restorative justice. While this option would have elicited interesting responses from victims of crime and criminal justice professionals, it was however rejected because responses generated from such fictitious scenarios would have been remote especially from the victims. The respondents might not have given their “real” expectations but “felt” expectations. Outcome of such research would have been similar to an ordinary public opinion poll survey (POPS), and moreover, vignettes would have been time consuming for the researcher.

Another method that could have been used is to facilitate ‘focus group discussions’ (see Williams *et al*, 2004) of victims of crime and criminal justice professionals in various locations in Nigeria to ascertain their views on the research question. This method was considered but was however rejected by the researcher, because focus group interviews in Nigeria may present difficulties for “older” people, and female victims who may be reluctant to participate as this involves the “airing of private business” or “washing dirty linen” before their junior or in public as the case may be. Moreover, the possibility of participants with strong social, marriage and family affinities coincidentally or unknowingly meeting at such group interviews would have inhibited participants’ responses or influenced withdrawals from the project. Potential participants may also be unconvinced of the confidentiality of the research; and the problem of dealing with disclosure of sensitive, personal, traumatic and potentially emotive information during such a research process would have been problematic, and perhaps contrary to the University’s Human Research Ethics guidance. Although with procedural safeguards ‘focus group discussions’ would have been accepted by the University’s Research Ethic Committee, the method was however carefully considered by the researcher and was rejected.

The above options were thus carefully considered by the researcher but were rejected, and so safeguards to control all of the limitations associated with the choice of methodologies chosen for this study were carefully taken care of by the researcher. Some of the procedural safeguards taken by the researcher to control these limitations are thus mentioned in the section on reliability and validity discussions thereon.

Tests of Reliability and Validity of the Research Methods: Pilot Tests

Mock interview/Role play

Having envisaged the above limitations or problems with the chosen research methodologies, the researcher undertook detail mock interview training for the research in which the application of the questionnaire/interview schedule is practiced in role plays. These simulation questionnaire administration/interview situations were recorded on video tape using the researcher's digital camcorder. Afterwards they were evaluated by the researcher and two of his friends who took part in the mock /simulation study: for interview mistakes, for how the interview schedule was used, for procedures and problems in introducing and changing topics, the researcher's non-verbal behaviour and his reactions to the interviewees, and the time taken to conduct the interview. These evaluations were made in order to make the researcher's interventions and steering in the real interviews more comparable. This allows the researcher also to deal with the so-called 'technical' problems (Flick,1998) of how to conduct interviews and to discuss solutions to them in order to further back up and defend the justification for the choice/use of interviews for this study.

Structure Laying Technique

In addition to the above reliability and validity test, the researcher also use the 'Structure Laying Technique (SLT)' identified by Flick (1998:84) for content analysis, reliability and validity of the instruments. Using the SLT method the researcher no more than one or two weeks after the first (pilot) interview, arranged a second meeting with the pilot interviewees. At this point the pilot interview has been transcribed and content roughly analysed. In the second meeting, the pilot interviewees' essential statements were presented to them as concepts or themes on small cards for content analysis and validation. To assess the contents the interviewees were asked to recall the interview and check if its contents were correctly represented on the cards. If this were not the case,

he/she was free to reformulate, eliminate and/ or replace statements with other more appropriate statements. Flick (1998:87) argues that where there were fewer reformulations, eliminations and/ or replacements of earlier given statements with other statements, it is assumed that the research instrument has passed the content reliability and validity tests. In this study, when the SLT cards were presented to the pilot respondents by the researcher there were no replacements or disagreement on the statements or themes submitted. The passing of these tests in this case gave confidence to the researcher on his judgement to deduce fairly and accurately themes from respondents' storyline in this study. The general relevance of this approach Flick argued is to allow the researcher to deal more explicitly with the presuppositions he/she might bring to the interview in relation to aspects of the interviewee.

Pre-test of Questionnaire

Similarly, in order to minimise errors due to misinterpretation of questions and to ensure that questions asked are interpreted accurately by respondents, a pilot test of the questionnaire was conducted. Before the pilot test the researcher and his supervisors both critically analysed the content and details of the questions contained in the questionnaire/ interview schedule to avoid and prevent the dangers of the questionnaire not covering research question to be investigated (Zone of Neglect) and /or to avoid some questions being irrelevant to the study (Zone of Invalidity). This pre- assessment of questions was important to identify early enough what Gray (2004:207) calls the 'Zone of Neglect' and 'Zone of Invalidity' respectively. The researcher also listened to professional advice from his supervisors to use simple words and avoid academic concepts and jargons in the wording of questions; they also advised that it is important to avoid leading questions such as those which assume a particular answer is appropriate. These reliability and validity checks are in line with the suggestion of Oppenheim (1992:128) that a number of things that researchers should avoid when formulating questions to ensure content validity include: avoiding long complex questions; double negatives; double barrelled questions; culture- specific terms; words with double meanings; leading questions; and emotionally loaded words.

In the pilot test exercise, a few respondents from the criminal justice professions (judges, magistrates, police and prison officers), and victims of crime were selected and the questionnaires to be used during the research exercise was administered to them (i.e. the VQIS for victims and the PQIS for criminal justice professionals) in Enugu, South East Nigeria (one of the zones used in this study). During the exercise, the researcher was looking out for potentially difficult questions, questions likely to be misinterpreted and those likely not to be clearly understood by the respondents, and the average time taken to answer the questions. None of the above difficulties were presented and the average time taken to complete the 13 points semi-structured PQIS (including the two preliminary pages which describes the project and the rights of the respondents) was an average of 30 minutes while the 22 points VQIS (also including the two preliminary pages which describes the project and the rights of the respondents) was an average of 40 minutes. The pilot exercise result was discussed with supervisors and they suggested the incorporation of an education variable in the PQIS for criminal justice professionals to find the correlation between their educational level and their response thus bringing the questions on the instrument to the 13 described above. To ascertain whether data collected using the above instruments (VQIS and PQIS) could be analysed using the statistical package (SPSS) chosen by the researcher, a meeting with Professor Anthony (an expert in SPSS Packages) was facilitated by the researcher's supervisors. The researcher and Professor Anthony test-ran the pilot data and was statistically validated. Professor Anthony thus advised the researcher that to facilitate the feeding of data input into the SPSS package, the closed questions in the instruments should be pre-coded; (for instance, 1=male; 2=female) which was complied with. The responses of the pilot respondents were added to the final data computed for this study.

Description of Research Subjects

The research use two kinds of subjects: 'victims of crime' and 'criminal justice professionals' in Nigeria. The description/definition of the 'criminal justice professionals' is straight forward in the sense that this study targets those professionals that work in the criminal justice system: police officers (junior/senior); judiciary (judges, magistrates, public prosecutors, and lawyers), and prison officers (junior/senior) who are Nigerians

and/or have legal rights to work in these professions in Nigeria without regard to gender, age, religion, and ethnicity.

However, the description or definition of whom a 'victim of crime' is in Nigeria (just like in any other country) somewhat complex because of the vulnerability/susceptibility of the larger population to injustice. Meanwhile, according to the United Nations' (1985) 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power', "victims" means:

persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power [and/or] a person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation.

Judging from the above United Nations definition, the researcher thus used victims of crime recognised under the Criminal Procedure Act/Penal Code of the law of the Federal Republic of Nigeria and those who by omission or commission were victimised in religious, ethnic and/or social violence in Nigeria without regard to gender, age, religion, and ethnicity.

Thus the selection criteria for victims' inclusion in this study are that, the victim be an individual rather than an organisation and the typology must conform to the United Nations definition of "victims" as mentioned above. The taxonomy of victims of crime in this study include: victims of domestic/sexual violence, fraud/419 victims, human trafficking, ethnic/religious violence, common/criminal assault, property/personal crime, secondary victims, victims who suffered repeat or multiple victimisation, and those whose victimisation took place a long time ago (over a year) or in the short term (under a year), among others. For the criminal justice professionals the selection criteria for inclusion was that the professional must be serving (active) individual in the Nigerian

criminal justice system (judiciary, police, prison, or private practice) rather than a retiree. No length of service or years of experience was considered (i.e. both junior and senior officers participated).

For both victims of crime and criminal justice professionals there were no barriers for inclusion and participation in the research on the bases of: human ecology (settlement), gender, religion and ethnicity. So respondents could be male or female, Christian, Moslem or non-conformist, live in urban or rural settlement. However, for both category of respondents (victims and professionals) there was limitations in terms of age (18 yr minimum) and educational backgrounds (primary education minimum). This is to forestall the participation of minors of which parental consent might be difficult to gain, and to avoid the use of interpreters considering the multi-linguistic nature of the research area-Nigeria. The participation of respondents in this study is thus in line with the ethical considerations discussed in chapter one of this thesis hence, Ethical approval was given by the University's Human Research Ethic Committee (copy is attached in the appendix).

Data collection/Sampling Techniques

Just as a good workman do not commence work without a good design, so is sampling technique in social survey a design for collecting information from a cross section of a population on a defined subject matter within a given period of time (Akinkoye, 1994). Akinkoye (1994) argues that sampling techniques are ideal in application when a subject matter is chosen for investigation (such as 'opinions of victims of crime and criminal justice professionals') as in the case of this study, and that as a result of research limitations (such as time and finance), it would not have been possible for the researcher to seek the opinions of all likely subjects (such as 'criminal justice professionals' and 'victims of crime' in Nigeria) in the general population.

So based on the above argument the researcher therefore decided to use the following sampling techniques to select a portion of the general population otherwise known as "sample" (in this case a sample size of about 200 respondents; 100 respondents in each category was anticipated) with the hope that the information collected from these

respondents (sample) would form the basis for making some ‘grounded theory’ about the total population of the subjects under study. In order for the researcher to be able to make objective and cautious interpretations to some degree, the researcher thus designed a procedure for drawing the samples of ‘victims of crime’ and ‘criminal justice professionals’ from the total population of the research subjects in Nigeria. The researcher therefore ensured that the anticipated 200 sample size taken for this research represented, to some high degree, the general population of ‘victims of crime’ and ‘criminal justice professionals’ in Nigeria from which it was drawn. That is, the researcher adhered to the guiding principle which must be taken to minimise probable sources of bias or scientific error that might creep into the selection of the anticipated 200 respondents used for this study.

Careful sampling therefore was important and a recommended procedure of scientific research such as this which ought to give every element or unit of the research population in Nigeria a chance of being included in the anticipated 200 sample size. So, the researcher in many way possible tried to ensure that each element of the ‘victims of crime’ and ‘criminal justice professionals’ in Nigeria has a probability of been selected, because it is only when this condition is guaranteed, that the researcher could describe the selection of the anticipated 200 sample size as fair, non-subjective and worthy of cautious and objective interpretations of the outcome of this research at some point. However, it was hard for the researcher to get the anticipated and representative sample size of 200 respondents so, the final valid responses used for the final analysis of this study is from 151 voluntary participants comprising 74 valid responses from victims, and 77 valid responses from the criminal justice professionals (see the quantitative data presentation chapter for analysis).

The researcher thus use the ‘cluster sampling technique’ (Akinkoye,1994:8) to first cluster the general population of Nigeria into the official ‘six geo-political zones’ (see IPCR, 2002: vi). He then use a ‘purposeful sampling technique’ (Akinkoye, 1994:9) to choose four geo-political zones of: South-South; North-Central; South-East and South-West for this study, excluding North-East and North-West which are in the opinion of the

researcher monolithic in culture, ethnicity and religion. The researcher's choice of the four chosen geo-political zones was therefore based on the thought that most cultures, ethnic groups, religions (including those from the North-East and North-West Zones) and social classes are likely to be found in the chosen areas. This is because these zones are the centres of industrial, commercial and bureaucratic activities in Nigeria which attract peoples of diverse background and social class. For instance, the cities of Abuja (FCT) and Jos (North-Central Zone) attract all classes of people in Nigeria because of the Iron-ore, Tin, and Columbite mines in Jos, and Abuja (FCT) is the seat of government/administrative headquarters of the Federal Republic of Nigeria. In the South-West, Lagos City (popularly known as 'no man's land' because of its multiculturalism) attracts all classes of people because of its vibrant tourism, economic and business activities. The South-South is where the highest oil/gas deposit and production activities take place which also attracts all classes of people both local and foreigners alike), and the South-East is the most well known commercial nerve centre of Nigeria where the highest buying and selling take place. So the choice of these four zones makes it easier for the researcher to likely have fair representation of the people, religions, ethnic nationalities and cultures in Nigeria as respondents in this study. So in the first instance, the researcher uses the 'cluster sampling technique' and the 'stratified randomised sampling technique' to compress the general population into a manageable size for the research sample size to be drawn. These sample techniques are preferred to the traditional random sampling at this point because random sampling would have been problematic to the researcher since some of the research subjects (victims of crime for instance) are 'hard to reach' subjects (see Lee, 1993). This therefore would mean that the researcher would have to travel round the country looking for victims of crime to randomly select.

So for the primary data, the researcher used several data collection methods to be able to get a relevant and substantial figure of sample size in each category of the target population because of the nature of the research subjects involved in this study who are mainly members of 'hard to reach' groups. The researcher thus uses the following methods to gather his primary data.

Snowballing/Networking

In this study, a purposive non-probability sample was chosen using the snowball or networking technique aimed at providing the greatest opportunity to access the research respondents, and to gather the most relevant data about the phenomena under investigation, mainly from 'the hard to reach' respondents: victims of crime, and the judges for instance. This technique was imperative for this research because using the snowballing or networking method of data collection every volunteered respondent that participated in this study was asked if they could talk to someone they know who met the criteria (for instance, victims who was victimised in the last one year) within the general population. This technique gives confidence to earlier reluctant or unwilling victims knowing that somebody they know has participated in the research. Additionally, the snowball sampling was used to further ensure that victims especially from under represented ethnic groups were encouraged to participate in the study voluntarily.

Outcropping

Sampling techniques or methods of data collection are not straightforward in any research. For this research in particular there was a strict limit on the resources (self-funded) available for the research and the availability of the categories of the target population to be investigated; coupled with the large number of respondents that are aimed to be sampled (about 100 in each category) if a valid result is to be attained for statistical purposes. The researcher was mindful of the fact that the limited resources and limitations should not affect the quality of data collected for this study so he used the 'outcropping' method in his data collection. This method was justified by Lee (1993) as he argues that in some certain circumstance, it may be difficult to find a list from which to select elements for a study. It may also be difficult to locate a sample of the target population. Lee calls this group a 'hard to reach' research subject. He thus suggests that in circumstance such as this, the researcher would have to look out for the possibility of where the research subjects are likely to gather or congregate for the possibility of 'harvesting' them. The researcher therefore used this method by visiting courts, prisons, police stations, local community and non-governmental organisations, and

seminars/workshops where the research subjects (victims of crime and criminal justice professionals) were likely to congregate. The researcher thus randomly approached the possible respondents at each venue, and introduces himself and the research interest. He then asked if the possible respondents would be interested to have a quick interview, or self complete the questionnaire for him. Those who could spare some time were interviewed instantly while others who preferred to arrange a meeting did so. Others who preferred to self complete the questionnaires were given the questionnaires. Some completed and returned them instantly while others returned them at a later date (with the researcher either going to collect them or they sent it by post).

Access/Procedure

The field survey of both victims of crime and criminal justice professionals took place simultaneously from December 2006 to April 2007 in purposefully selected four geopolitical zones in Nigeria: South-South, South-East, North-Central and South-West (reasons for the selection of these geopolitical zones have been highlighted earlier). Before the commencement of the field survey a pilot study was conducted of which the responses are included in the final data. For the fact that the respondents in this study (victims of crime, and criminal justice professionals) are 'hard to reach' research subjects, a multi-modules approach was used by the researcher to get as many responses as possible. For instance, a soliciting letter endorsed by (late) Professor Brian Williams enclosed thirty questionnaires to two influential criminal justice professionals (these persons are members of the National Judicial Institute and lecturers at the Nigeria Law School respectively) that the researcher have met at a National Stakeholders' conference on the reform of criminal justice administration in Nigeria. The essence was to get as many responsible federal judges and lawyer respondents as possible. To further access judges, magistrates, public prosecutors and lawyers the researcher attended the Annual Law Week of the Nigeria Bar Association held in Enugu on 11th-15th December, 2006 for the purpose of interview and questionnaire administration to volunteer conference participants. Unfortunately, most of the judges and magistrates that collected the questionnaires at the conference never returned them in spite of several efforts made by the researcher to contact them on this matter.

To access officers of the Nigeria Police, the researcher sent a formal application for anonymous interview of police officers to the Commissioner of Police at the Police Headquarters (see Appendix for the protocol letter). On approval of the application the researcher approaches officers and men of the Nigeria Police at duty posts in the selected four geo-political zones for voluntary interview and/or completion of questionnaires. On one occasion however, a Divisional Police Officer (DPO) of a Central Police Station in the South-East zone requested that the researcher give a synopsis of the research topic 'restorative justice' on one of their weekly 'Thursday lecture series' and the researcher obliged. After the lecture several officers and men collected the questionnaires for completion but very few were returned through the researcher's contact person: to save cost of travel at some point, the researcher left copies of the PQIS to a nominated police officer who is a lawyer and a DFID trained community policing co-ordinator to help distribute to volunteer colleagues.

On the part of prison officers, accessing this category of professionals was not difficult since the researcher is an "insider". However, the researcher was mindful of the fact that the overwhelming volunteers might want to say what they think the researcher want to hear (because of the ongoing strong advocacy for penal reform at the time). For this reason very few volunteers were interviewed or given questionnaires. On the part of victims of crime, accessing this category of subjects was problematic initially (especially from the courts and police stations) since their defence lawyers often prevented them from talking or mentioning anything about "their" case to the researcher. Noting this difficulty, the researcher sent a formal application for anonymous interview of victims of crime that access the legal clinic of a Non-Governmental Organisation: the NGO has a national spread with offices in the four geo-political zones covered for this research (see Appendix for application letter). In spite the fact that approval was given to the application, victims were not willing to talk to the researcher because the victims accessing the legal clinic are all female victims and moreover, the policy of the NGO for service delivery is "women for women". Thus the researcher liaised with the Programme Officer who collected the VQIS and assisted in the administration thereof. But to avoid

all victim respondents coming from this singular NGO the researcher intensifies visits to police stations, the Citizens' Rights and Mediation Centre (CRMC) -a DFID funded pilot project, and courts to access victims (outcropping) and where necessary request a volunteered victim to recommend another (networking).

The researcher also took advantage of being a delegate and participant to the IPCR/UNDP funded National Peace Policy workshop held on 28th February to 3rd March 2007 in Nigeria to administer questionnaires to participating victims nominated by the National Emergency Management Agency (NEMA) among others. In another development a psychologist and friend of the researcher who works with the National Agency for Prohibition of Trafficking in Persons (NAPTIP) was instrumental to getting access to a few victims of human trafficking: those Williams (2005) describes as 'lost' victims of crime (but are classified in this study as victims of 'sex offence').

In addition to these multi-modular approach to accessing respondents (victims and professionals) the researcher published a sensitising essay in the DFID South-South/South-East news bulletin entitled 'The State Versus Victims of Crime: Needs at Parallel'(Omale, 2006a). The aim of this article which is also hosted by De Montfort University website is to stimulate responses and opinions of relevant audience with regard to the research question. A few readers who reacted to this article voluntarily took part in the field survey.

Secondary data collection methods

The researcher's sources of 'secondary' data drew from his personal work experience, participation in international seminars and conferences, library sources of academic books and journals, and internet database such as ASSIA: Applied Social Sciences Index and Abstracts. And in view of the fact that this study is non-experimental research and the aim is to inform and influence criminal justice reform policy and practice in Nigeria, where restorative justice practices are non-existent, the 'traditional' approach of literature review was adopted rather than the 'meta-analysis' and 'best-evidence synthesis' models (see Harlen and Schlapp,1998). The 'meta-analysis' and 'best-evidence synthesis' models

were not used in this research because the aim of this study is not to investigate similarities and differences between groups of studies that have already been done but to provide a summary of the current state of knowledge and existing works in the field of restorative justice and victimology internationally for the purpose of policy information and decisions in Nigeria.

Data Analysis

There is no prescriptive approach to transcription of interpretive phenomenological opinion such as those presented by respondents in this study because there are several methods of analysis of transcripts that can be used (see Smith and Osborn, 2003 for instance). Moreover, Krauss (2005:764) argues that the process of analysis of ‘between-method’ triangulated data (such as the one used in this study) is described as ‘eclectic’, because there is no ‘right way’ of conducting it. However, how conclusions are drawn from interpretive, intuitive analysis will be unclear to readers unless researchers describe the method of analysis used to show how the conclusions were drawn from the data (Krauss, 2005). Therefore, the analytical model used in this study is described below.

The analysis of data in this study took two forms in accordance with the ‘qualitative’ and ‘quantitative’ methodologies (‘between-method’ triangulation) used for this study. The analysis of the qualitative data (written in the self completed questionnaires and those written in the questionnaires by the researcher in the face-to-face interviews with 15 respondents), began with the researcher attaching code numbers to each questionnaire (for instance, blue pen code numbers VQIS 001-074 for victims, and red pen code numbers PQIS 001- 077 for professionals). This process was for all the 151 valid questionnaires respectively. He then read each questionnaire and independently makes notes in a notebook, of each of the responses in each of the questionnaires. They are separate notes for victims’ responses, and for criminal justice professionals by transfer of information presented in the questionnaires to the notebook in codes and themes. The themes are generated based on the researcher’s interpretations of the information

presented or written in the questionnaires. The researcher's interpretations and basis for the themes are clearly informed by discourses and debates in the literature. However, to control researcher's subjectivity he often seeks opinions of his wife by reading out respondents' presentations to ascertain his wife's meaning to the texts. Where the wife's meaning of the text differs significantly to the researcher's chosen theme, a third party is consulted and the nearest theme to the meanings of the text by the three parties is adopted, and in cases where text have multiple and inter-related meanings, the researcher's judgement and understanding of the relevant literature overrules. After the themes have been sorted, the researcher wrote up a single document containing all relevant materials in the responses of the respondents in a form of transcribed field notes (see Appendix). He then corrected, edited and extended the verbatim transcribed field notes to make meanings for the academics, and reading audience in a higher theoretical and analytical discourse, and in accordance to Miles and Huberman's (1994) model. The field note document was re-examined, to determine if there was any shared opinion between respondents' accounts. Respondent's accounts containing related or similar opinions are then aggregated under a single theme as presented in chapter six. For instance, if respondent indicated that the reason why he/she intended to participate in restorative justice is to see the possibility of getting his/her stolen item back, the researcher would classify such victim's need as: "reparation, restitution, and or compensation" (see the qualitative data presentation in chapter six for examples). The themes and "typifications" were based on the large range of data categories generated from the field work. Some of the themes or "typifications" were not really verbalised responses by the respondents but created by the researcher to give meaning to the wide range of concepts generated in the data. However, the data comprising the themes all pointed to the same or similar general understandings and meanings despite the variety of details. This was done so that the diversity of data or concept falls within one overall theme, and to convey meaning through the generalised theme. The researcher then developed the theoretical discourse and storylines featuring the words and experiences of research participants themselves as presented in chapter six, and in the discussion chapter. This approach was taken because it is an important result of a good qualitative data analysis and also adds richness to the texts, findings and their meaning.

However, the quantitative data gathered in this study, come from the pre-coded responses to the structured questions in the questionnaires. For instance, a structured question in the questionnaire state: ‘how likely are respondents to participate in a restorative justice programme?’ the responses to this question for instance are already pre-coded (1=very likely; 2= not very likely, 3= undecided) for easy classification of the responses. Similarly, the demographic variables of respondents (like sex, age, education, locality, etc) are also pre-coded (for instance: male=1, female=2). These variables related to each respondent, and the pre-coded responses are manually transferred into the fieldwork note book according to each respondent’s answers to the questions in the questionnaire. The raw data are then fed into the variable view of the Statistical Package for Social Sciences (SPSS) software version 14 on the computer in the coded format. The coded responses entered into the SPSS variable view automatically generated data set which are then analysed automatically by the SPSS software in the form of descriptive statistics like: cross tabulation, chi-square; percentages; charts and graphs where necessary. The quantitative data outputs are presented and analysed in chapter five, and both quantitative and qualitative findings are integrated in the discussion (chapter seven). The probable implications of the findings as applicable to Nigeria social policy, and their original contributions to body of knowledge in restorative justice and victimology are discussed and presented in the subsequent chapters.

CHAPTER 5

QUANTITATIVE FINDINGS

Introduction

The most contentious issues in restorative justice at present are: whether restorative justice is to the interest of victims of crime (see Wemmers and Cyr, 2003), and whether restorative justice should be contained in the criminal justice system or as a complete alternative model (see Wright 1996; Omale, 2005:10; Wright and Zernova, 2007). There is no common grounds among restorative justice advocates as to how exactly the justice model should be implemented and its relationship with the conventional criminal justice system (see Wright and Zernova, 2007). Whereas some advocates of restorative justice argue that restorative justice has potential benefits for victims who participate voluntarily, others argue that restorative justice process might not be good for victims of crime. For instance, Williams (2005:87) notes that one tendency common to a number of criminal justice professionals all over the world (and Nigeria in particular) is to act against the interests of offenders and those accused of committing offences on the assumption that this is bound to make the victims of crime happy. By this assumption the "State" or the criminal justice professionals perhaps "think" for the victims of crime. They think they know what victims want without perhaps truly knowing what the victims want. Bradshaw (1972) recognises this difficulty in his 'Taxonomy of Social Needs' where he argues that often, needs are determined by professionals or experts (who works on behalf of the vulnerable people) according to some set of criterion or norms (defined as normative needs) which might differs from the perspective of the people who have it (felt needs: needs which people feel).

The questions therefore are: what exactly do the victims of crime want from the criminal justice policy? Are victims of crime eager for revenge or retribution as might be expected and perhaps portrayed by the state? Does diminishing the rights of offenders and increasing the rights of victims actually provide what victims really want in criminal

justice system? What are victims' "real needs" in the criminal justice system: what do they want? Why do they want what they want? And how do they want it?

As these debates, counter arguments and diversity of thinking among restorative justice advocates continues, Daly (2001) suggests we should ask the victims (and perhaps the criminal justice stakeholders too) because, as Rita Marley's musical label put it 'those who feels it knows it'. So the overall aim of this research and more specifically this chapter is to present findings from victims of crime and the criminal justice professionals from a field study conducted in Nigeria to advance the debate and knowledge in this area of crime and victimisation.

Thus, following several months of conducting interviews and questionnaires administration with criminal justice professionals and victims of crime in four geo-political zones in Nigeria, the researcher recognise that the voices of the criminal justice professionals and victims of crime themselves had to be heard and understood to place their perceptions, expectations, fears and experiences in perspective with regard to restorative justice as alternative to prosecution. So listening to victims of crime and the criminal justice professionals describing their own perceptions, fears, experiences and expectations in the context of restorative justice as an alternative to prosecution is imperative for social policy decisions and implementation.

FINDINGS: QUANTITATIVE DATA

ACCEPTABILITY OF RESTORATIVE JUSTICE BY VICTIMS AND PROFESSIONALS

For this study, the researcher anticipated a total valid response of 200 respondents: 100 victims and 100 criminal justice professionals respectively. For this reason, a total number of 250 questionnaires (see Appendix): 125 VQIS for victims and 125 PQIS for criminal justice professionals were dispensed. However, out of the 250 questionnaires, a total of 151 (74 for victims and 77 for professionals) were certified valid responses for

analysis because some questionnaires were not returned by respondents, and some responses were incomplete and therefore invalid for analysis. This represents the response rate of 59.2% for victims, and 61.6% for the criminal justice professionals.

Similarly, the table below shows the summary breakdown and percentages of the valid responses used for analysis in this study.

Table 5.1: Summary table showing breakdown of respondents

Type of Respondents		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Victim	74	49.0	49.0	49.0
	Professional	77	51.0	51.0	100.0
	Total	151	100.0	100.0	

The total number of 151 responses comprising 74 victims and 77 professionals that took part in this study as shown in the summary table above is what has been used by the researcher for the analysis of data and findings presented in this chapter and the next respectively.

KNOWLEDGE OF RESTORATIVE JUSTICE BY VICTIMS AND PROFESSIONALS

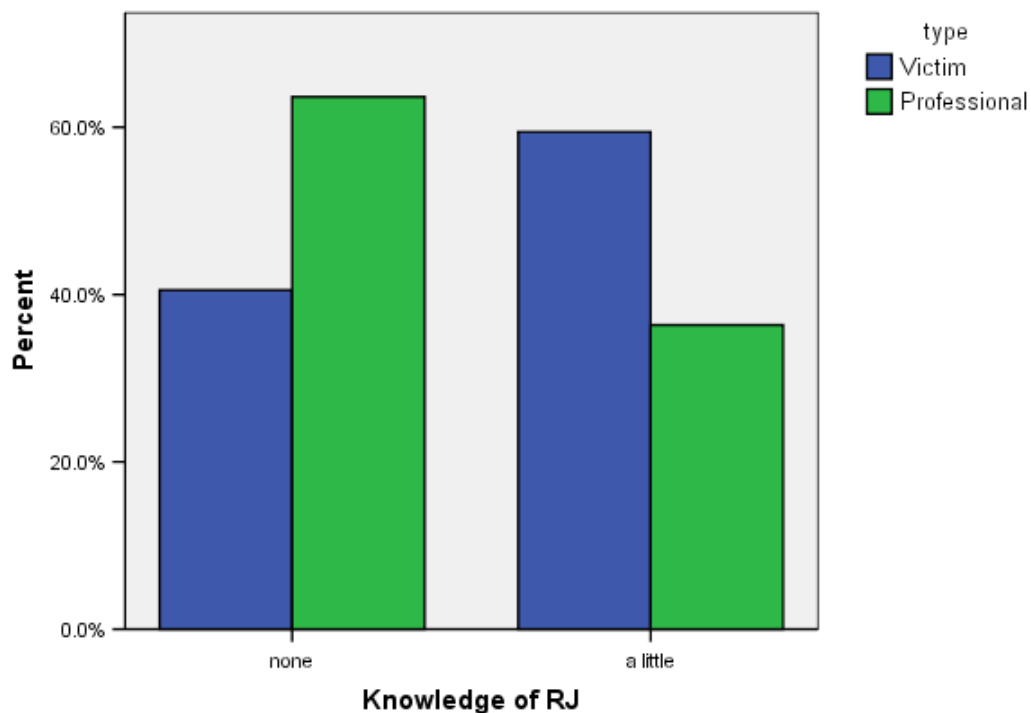
For the fact that the concept of ‘restorative justice’ appears to be a new terminology to the respondents in Nigeria, and for the purpose of conceptual clarity and understanding, restorative justice was defined to respondents in this study as ‘a problem solving approach to crime which involves the parties (victims and offenders) themselves and the community generally, in an active relationship with statutory agencies’ (Marshall, 1999:5). Although this definition has its own critics, it was however, used in this study because of its near universal acceptability in most restorative justice literature.

When victims and professionals were asked to tick between the options: “None” and “a little” to ascertain whether they have any knowledge of restorative justice within Nigeria or elsewhere in the world before the interview, 40.5% of victims and 63.6% of

professional indicated “none”, while 59.5% of victims and 36.4% of professionals indicated “a little” knowledge. When they were prompted by a follow up question to give reasons for their answers, those who indicated that they have “a little” knowledge, associated the definition of restorative justice to: “customary or informal justice”, “Alternative Dispute Resolution”, “customary law”, or “community policing”. Some of these concepts: Alternative Dispute Resolution, and community policing for instance, were buzz words in the media at the time of this survey.

Whereas, the knowledge of the above concepts could be synonymous with restorative justice, they are however to some extent not restorative justice in terms of ‘process’ and ‘outcomes’. Meanwhile, respondents’ responses presented in these findings are assumed to be informed choices based on the definition of restorative justice given to them. However, while their association of the concept of restorative justice to the values of the terms mentioned above does not connote negativity per se, this finding shows the need for trainings of the criminal justice professionals and the Nigeria public on the core principles, process, and philosophies of restorative justice if anything alternatives to court proceeding is not to be mistaken as restorative justice, and to forestall the misrepresentation of restorative justice to actions such as vigilantism, BAKASSI, etc. However, the chart below shows the statistical percentages testing the knowledge of restorative justice among victims and professionals in Nigeria.

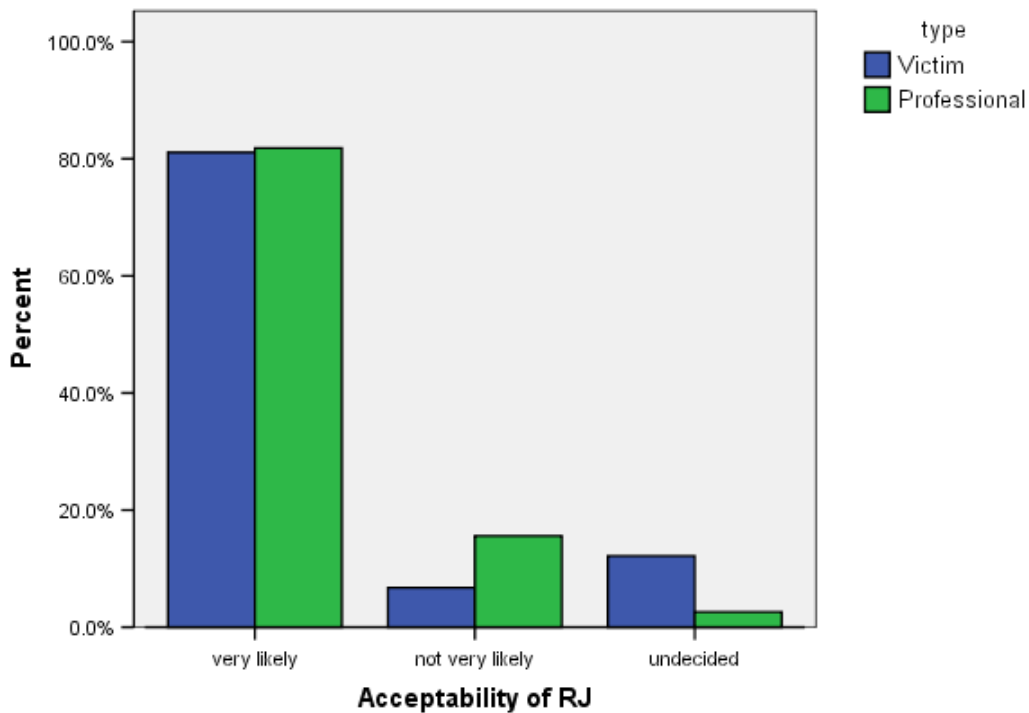
Fig.5.0. Chart Testing knowledge of RJ among Victims and Professionals



ACCEPTABILITY OF RESTORATIVE JUSTICE BY VICTIMS AND PROFESSIONALS

In spite of the poor knowledge of restorative justice by respondents (victims and criminal justice professionals) presented above, a statistical cross tabulation to ascertain the acceptability of restorative justice (by their own understanding) shows that 60 (81.1%) of victims are likely to participate, and 63 (81.8%) of professionals are likely to recommend restorative justice in Nigeria. See bar chart below for details.

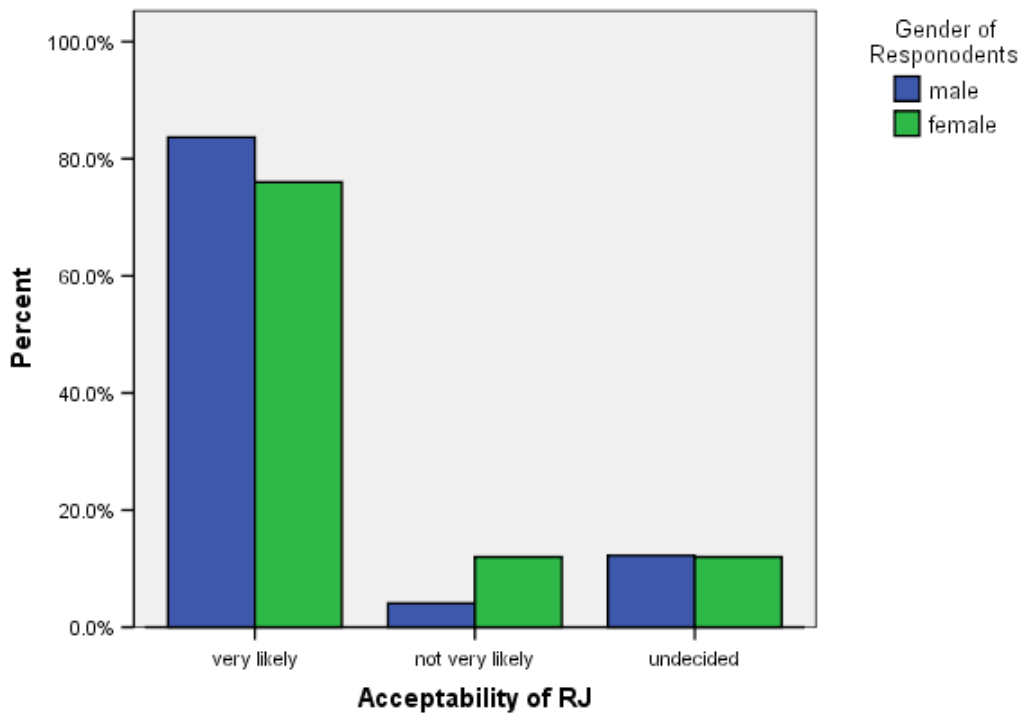
Fig.5.1 Acceptability of RJ by Victims and Professionals



GENDER AND ACCEPTABILITY OF RESTORATIVE JUSTICE

A breakdown of the above result on gender based variable for the 74 victims of crime shows that 49 of the victim respondents were male and 25 were female. Out of this figure, 41 (83.7%) of male victims and 19 (76.0%) of female victims are likely to accept restorative justice in Nigeria. While 2(4.1%) of male victims compared to 3 (12.0%) of female victims are not likely to accept restorative justice and, 6 (12.2%) of male victims and 3 (12.0%) of female victims are undecided. See chart below for analysis.

Fig. 5.2 Victims acceptability of RJ by Gender

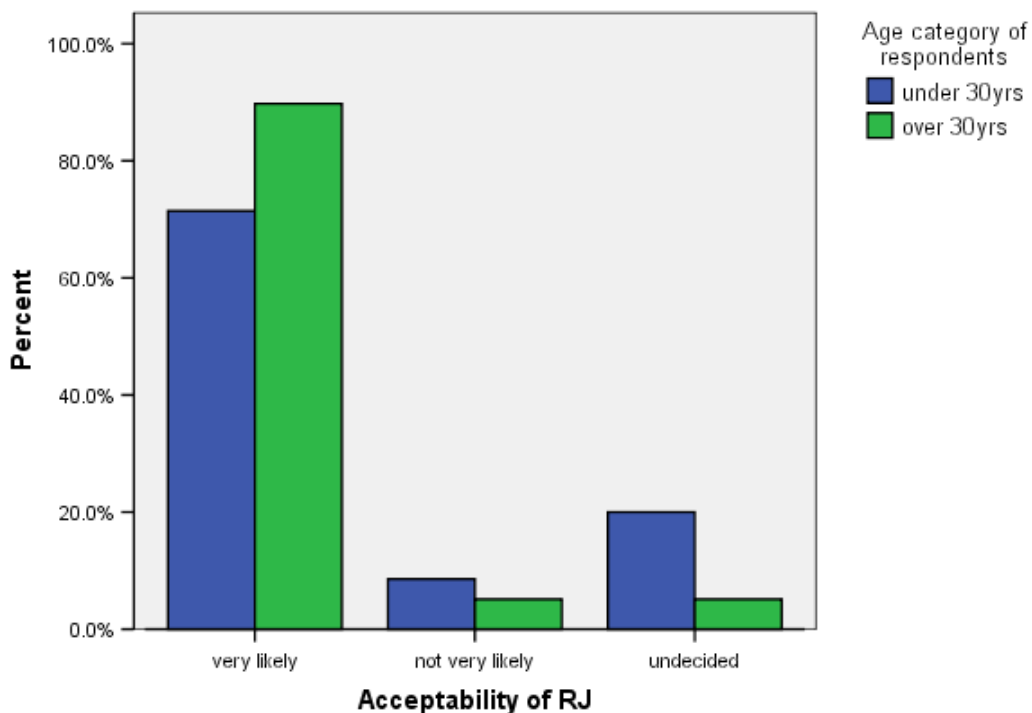


The finding and chart above shows a positive response by victims across gender.

AGE AND ACCEPTABILITY OF RESTORATIVE JUSTICE

On Age category of victim respondents, 35 were under 30 years old whereas 39 were over 30 years of age. Out of the under 30 years old victim respondents, 25 respondents which represent (71.4%) are likely to accept restorative justice compared to 35 (89.8%) of the over 30 years old victims. Three respondents (8.6%) of the under 30 years are not likely to accept restorative justice compared to two (5.1%) of the over 30 years respondents, and seven respondents (20.0%) of the under 30 year are undecided compared to two (5.1%) for the over 30 years old respondents. See chart below for details.

Fig. 5.3 Victims acceptability of RJ by Age



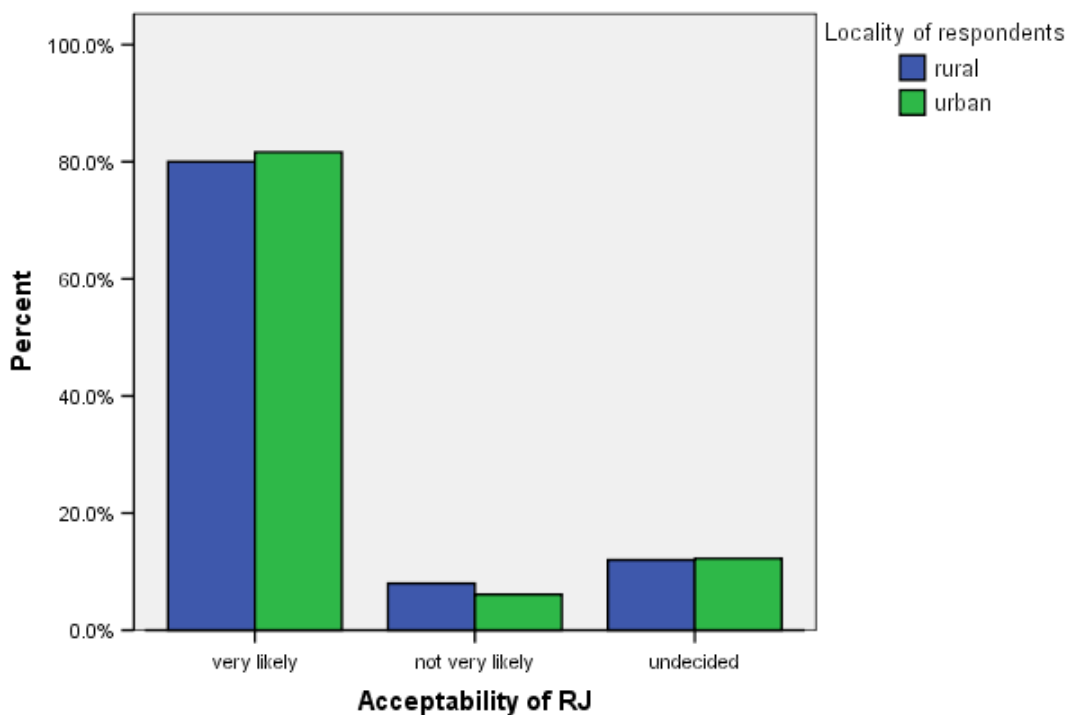
A close look at victims' response across age variables above shows that the overall response by victims of crime across both age category to accepting restorative is high except for the slight 'unacceptability' and 'indecision' levels among the under 30 years of age.

LOCALITY AND ACCEPTABILITY OF RESTORATIVE JUSTICE

In another finding attempting to ascertain whether restorative justice could be acceptable and practiced in both rural and urban Nigerian communities, the study found that out of the 74 victim respondents 49 respondents describe themselves as urban dwellers whereas 25 respondents comes from the rural or semi-urban communities. Out of these figures, 40 urban respondents (81.6%) indicated their likelihood of accepting restorative justice as alternative to prosecution while 20 of the respondents (80.0%) who described themselves to come from the rural or semi urban communities agreed to the use of restorative justice

as alternative to prosecution. Only three (12.0%) of the rural dwellers said they were undecided as opposed to six (12.3%) from the urban whereas, only two (8.0%) of respondents from the rural as against three (6.1%) from the urban are unlikely to accept restorative justice as alternative to prosecution. This finding shows a positive indication that restorative justice could effectively be practiced in both urban and rural communities. Thus the fears or feelings that urban communities have lost their sense of ‘communitarianism’ which might make the practice of restorative justice impossible appears to be disputed by this finding to some extent in the Nigeria context. This thus shows that the sense of community is perhaps not in its geographical sense but in its social interactions. See the chart below for detail of result.

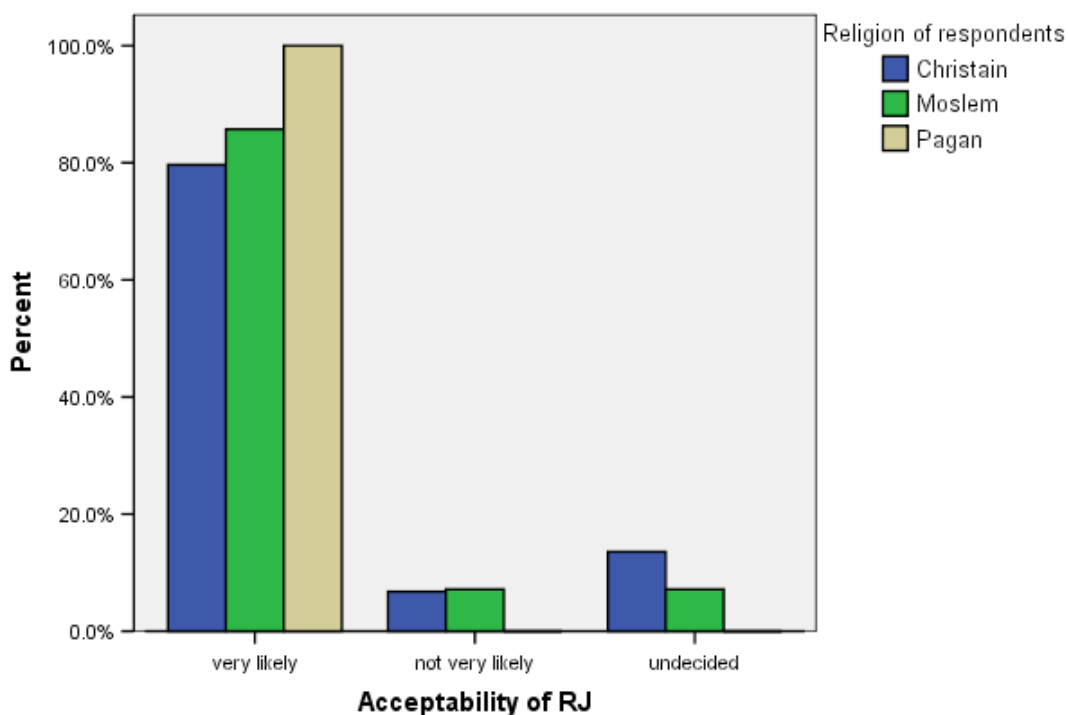
Fig. 5.4 Victims acceptability of RJ by Locality



RELIGION AND ACCEPTABILITY OF RESTORATIVE JUSTICE

In another finding, this study attempts to find victims' response across religious line. This is imperative because Zehr (2001), argue that religion plays into and reinforces identity and culture and thus should be taken into consideration in the design, use and application of restorative justice. The table and chart below shows the details of the data.

Fig. 5.5 Victims acceptability of RJ by Religion



In this study the religion of the victim respondents were identified. Out of the total of 74 respondents 59 (79.7%) were Christians, 14 (18.9%) were Moslems and 1 (1.4%) identified himself as pagan or traditionalist (which is statistically insignificant). 47 (79.7%) of the Christians, 12 (85.7%) of the Moslem and 1 (100%) and the only pagan or traditionalist (which is statistically insignificant) in this study indicates likelihood of accepting restorative justice as alternative to prosecution. 4 (6.8%) of the Christians compared to 1 (7.1%) of the Moslem are unlikely to accept restorative justice as alternative to prosecution whereas, 8 (13.6%) of Christians and 1 (7.1%) of the Moslem

respondents is undecided. This study thus supports positive response from victims of both (major) religions in Nigeria: an indication that restorative justice might likely be acceptable to all the major religions in Nigeria. Perhaps this finding support the theoretical discourse that restorative justice is a “religious justice” because its principles cuts across all major world religions as discussed in the literature review. Perhaps, what Nigeria, and the world need is a thorough and genuine knowledge of the restorative principles of all the major world religions which could be harness as a resource for national and world peace rather than violence.

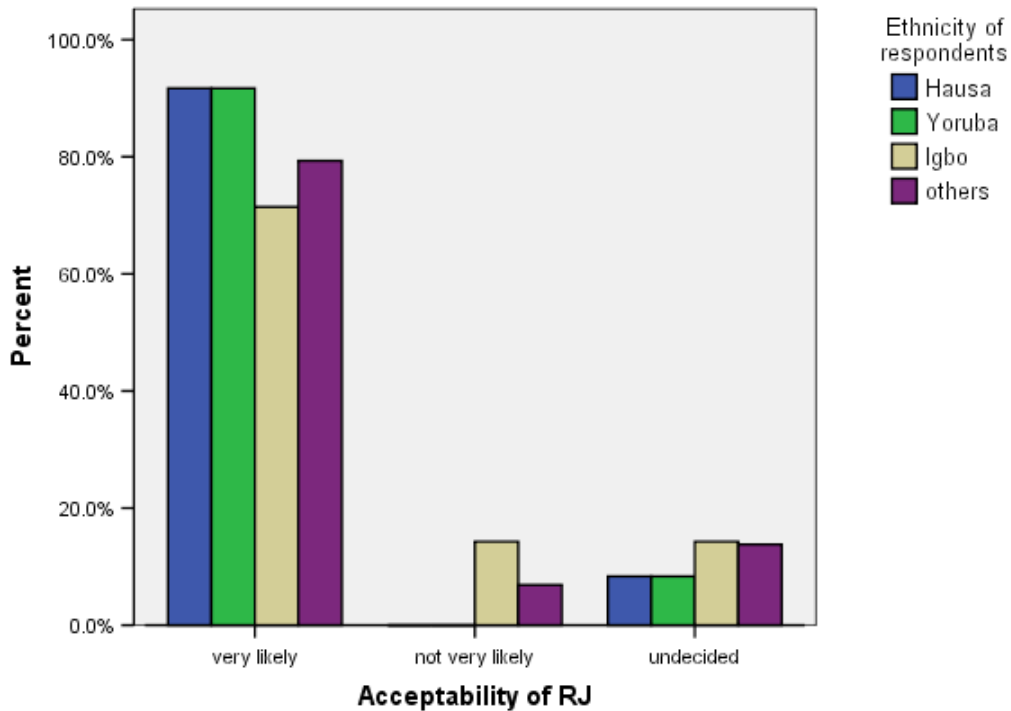
MULTICULTURALISM AND RESTORATIVE JUSTICE

In another development, the acceptability of restorative justice by victims of crime that participated in this study was high across all the multicultural ethnic groups in Nigeria. Out of the 74 victim respondents, eleven (91.7%) respectively from the Hausa and Yoruba ethnic groups, 15 respondents which represent (71.4%) of the Igbo ethnic group, and 23 respondents, which represent (79.3%) from the ‘others’ ethnic group indicated support for restorative justice. Three respondents from the Igbo ethnic group which represent 14.3%, and two respondents from ‘others’ which represent 6.9% said they are unlikely to accept restorative justice as alternative to prosecution in their own cases. While, one respondent which represent 8.3% respectively from both the Hausa and Yoruba ethnic groups are undecided in their response, and three victim respondents which represent 14.3% of the Igbo ethnic group and four respondents from ‘others’ which represent 13.8% are undecided. See the chart below for details.

This finding is imperative because in a survey of 555 Victim-Offender Mediation cases by Gehm (1990), he found that forty seven percent (47 %) of the victims were more willing to participate if the offender was white as were the victims (also see Umbreit, Vos and Coates, 2006:3). However, the finding of this study perhaps shows that restorative justice could be effectively practiced in a multicultural setting in the Nigerian context for

instance.

Fig.5.6 Victims acceptability of RJ by Ethnicity



LEVEL OF EDUCATION AND ACCEPTABILITY OF RESTORATIVE JUSTICE

To test the possibility of whether restorative justice would be preferable to both the educated (elites) and working class people, the study built in the education variable in the questionnaire to ascertain respondents' level of academic and educational achievements and how this social status might influence their responses and the possibility of participating in restorative justice as a model of disposing their cases.

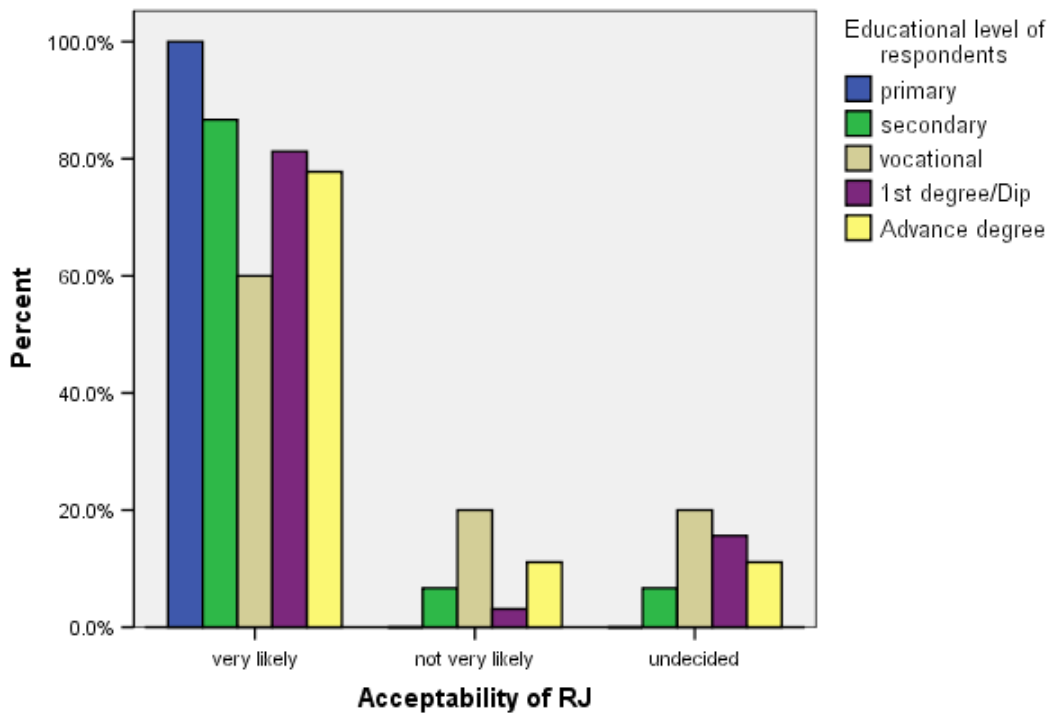
This study found that among the 74 victim respondents 4 respondents have primary or elementary education, 15 have secondary or GCSE education; 4 have vocational skills

training, 32 have undergraduate degree or its equivalents, and 18 have post graduate degree.

A breakdown of the data shows that all 4 respondents with primary education which represent 100% have no objection to the use of restorative justice initiative. 13 respondents with secondary education which represent 86.6%, three (60%) with vocational training, 26 (81.3%) of those with a degree or equivalents, and 14 (77.8%) of those with advance degree indicated likelihood to accepting restorative justice initiative. One respondent (6.7%) for the secondary education group, one (20%) from the vocational education group, one (3.1%) from undergraduate degree group, and two (11.1%) from the postgraduate degree holders indicated that they were unlikely to accept the restorative justice initiative in their own cases. While one (6.7%) from the secondary education group, one (20%) from the vocational education group, five (15.6%) from the undergraduate degree group, and two (11.1%) from the advance degree holders are undecided in their responses.

This finding shows that restorative justice appears to be attractive across the social class of respondents in Nigeria that took part in this study. See bar chart in the following page for details.

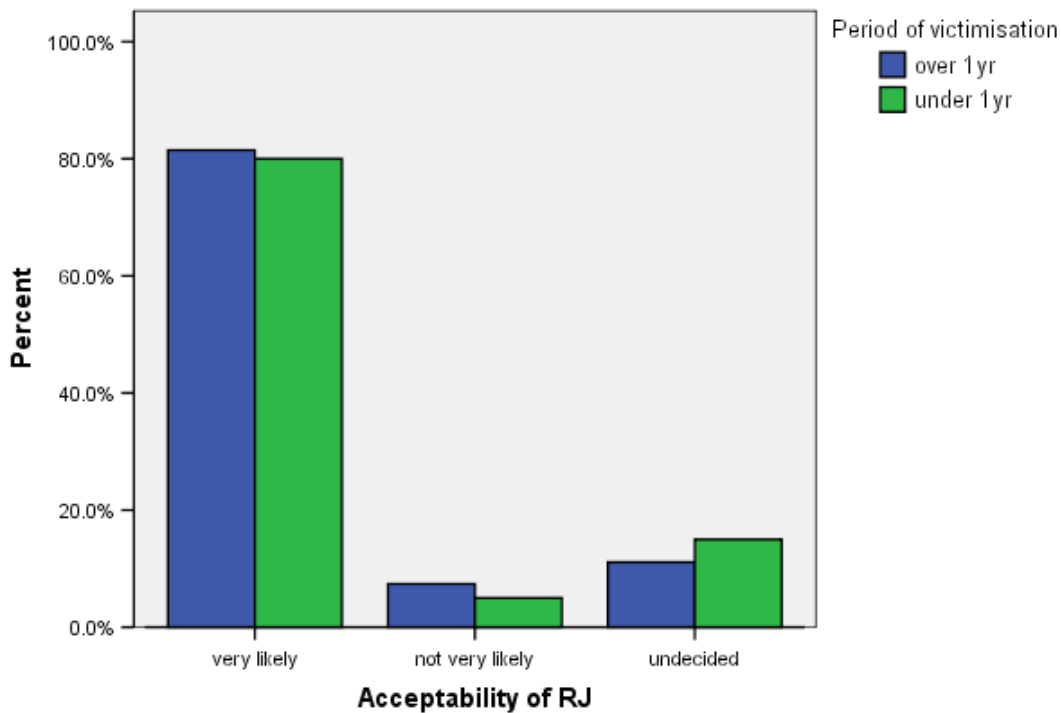
Fig.5.7 Victims acceptability of RJ by level of Education



DURATION OF VICTIMISATION AND ACCEPTABILITY OF RESTORATIVE JUSTICE

This study also attempts to find out whether the period of victimisation could influence victim's response to acceptability of restorative justice. The study found that 44 victims whose victimisation period was over 1 year before their participation in the study were 81.5% likely to accept restorative justice, while 16 victims whose victimisation took place less than 1 year before the survey were 80.0% likely to participate in restorative justice. It thus appears that there is no statistical significant difference between period and duration of victimisation and victims' desire to participate in restorative justice. See chart below for graphical representation.

Fig. 5.8 Period of victimisation and acceptability of RJ



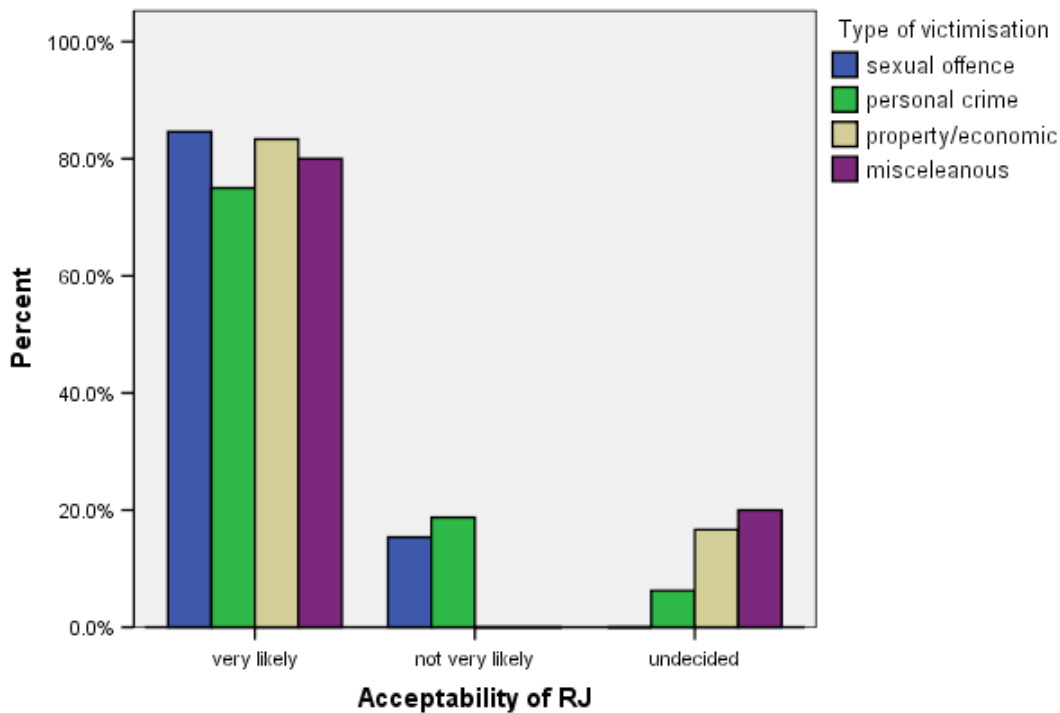
This finding thus could contribute to the debate as to how much time is appropriate before a victim should be consulted for restorative justice meeting.

TAXONOMY OF VICTIMISATION AND ACCEPTABILITY OF RESTORATIVE JUSTICE

On the taxonomy of victims suitable for restorative justice, this study attempts to find out whether restorative justice is more suitable for minor crimes than serious crimes or both. As controversial as this debate in victimology and restorative justice literature, this study found some evidence in the Nigerian context that might require further research (that is, the need to test this opinion finding in an empirical project). Out of 74 victims that took

part in this study, 30 are classified by the researcher to have suffered from economic/property crimes where cases such as: fraud/419, debt, and land recovery dispute, theft, and burglary are mentioned. 15 victims are classified by the researcher to have suffered from personal crimes when victims mentioned to have experienced: robbery, GBH, Common assault, murder, and death of family member for instance), 15 are also classified by the researcher to have suffered from sexual offences (where cases such as: Battery or domestic violence, Human trafficking for prostitution, sexual assault or rape are mentioned), and 15 are classified as miscellaneous offences in cases such as fight, false accusation, police brutality, unlawful arrest, and intimidation by superiors. The four taxonomy of victimisation shown in the chart below are therefore the researcher's classification of several offences mentioned by victims in the questionnaires. The classification is in line with commonsense based on the types of offences mentioned by respondents, and in line with the researcher's understanding of the Nigerian Criminal Code (classification of offences). Therefore, from the chart shown below it appears in principle that restorative justice might be suitable for both minor and serious crimes depending on the readiness of victims and the preparation put in the 'process' by the programme coordinator as suggested by Umbreit *et al* (1999) and reviewed in the victimological evidence herein. See Figure 5.9 in the next page for the chart and percentage analysis.

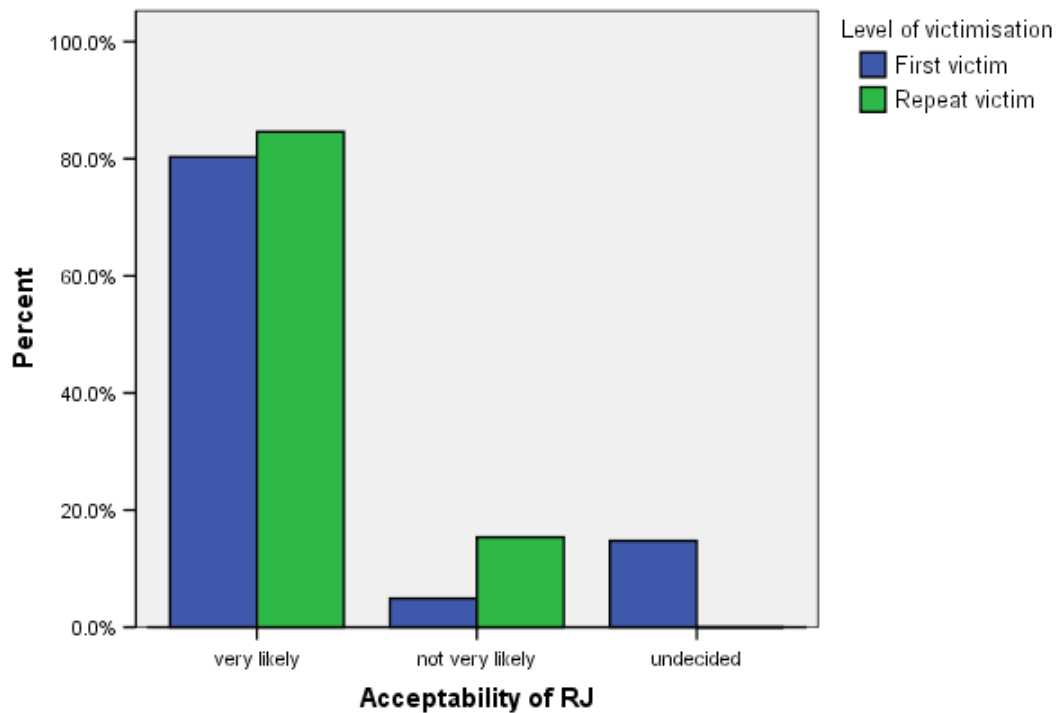
Fig. 5.9 Taxonomy of victimisation and acceptability of RJ



LEVEL OF VICTIMISATION AND ACCEPTABILITY OF RESTORATIVE JUSTICE

This study also attempts to find out whether restorative justice is more appropriate for first victims than repeat victims. The study found that there is no statistical significance between the response of first victims and repeat victims that participated in this study. Out of the 74 victim respondents, 61 were first victims, and 13 were repeat victims. 49 of the first victims and 11 of the repeat victims indicated their willingness and acceptability for restorative justice. Nine of the first victims were undecided, and three of the first victims, and two repeat victims indicated their unwillingness to accepting restorative justice. See the chart below for data analysis and percentages.

Fig.5.10. Level of victimisation and acceptability of RJ



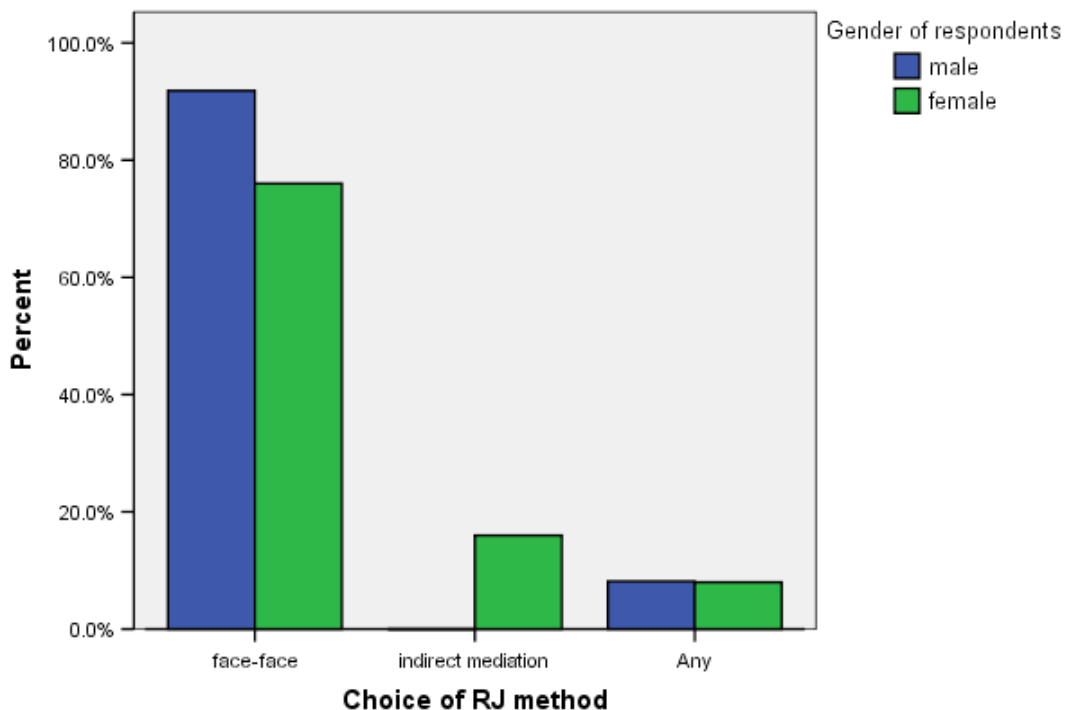
CHOICE OF RESTORATIVE JUSTICE METHOD BY VICTIMS

In a study by Hoyle, Young and Hill (2002) that considered three different types of restorative cautioning schemes in Northumbria, Thames Valley, and South Yorkshire, they found that about 75% of the participating victims declined an offer to meet the offender when given a choice between a ‘direct mediation’ and ‘indirect mediation’. In view of this, and to contribute to the debate on victims’ participation in restorative justice conferencing, this study attempted to find out from victims of crime in Nigeria how they preferred to be consulted in a restorative justice process. The study found that 45 (91.8%) of male victims and 19 (76.0%) of female victims indicated their preference for a ‘face to

face' meeting compared to 4 (16.0%) of female victims who indicated preference for 'indirect mediation'. While 4 (8.2%) of male victims and 2 (8.0%) of female victims says 'any' method (direct or indirect mediation) would do.

The finding of this study with regard to acceptability of 'direct mediation' and 'indirect mediation' differs significantly from previous studies conducted in Britain by Kilchling (1991), Hough and Mayhew (1985), Maguire and Corbett (1987) and Hoyle, Young and Hill (2002). While the significant difference might be due to cultural variation between Nigerian victims and British respondents, comparative research or further works however is needed and to ascertain why the difference occur. In the Nigeria context for instance, future research could test the difference and or congruity between 'opinions' and 'practice' because much of the findings review above are results of research conducted with victims who have actually experienced or participated in restorative justice projects in Britain whereas, the finding of this present study in Nigeria is an opinion survey. See chart below for data analysis.

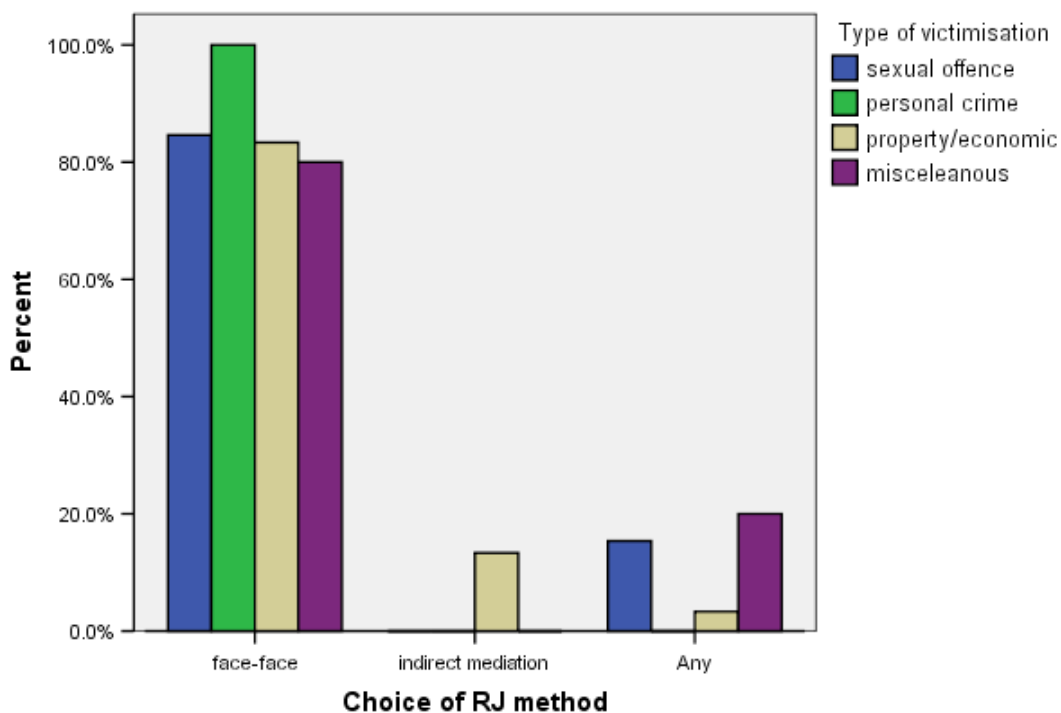
Fig.5.11. Victims and Choice of RJ Method



TAXONOMY OF VICTIMISATION AND CHOICE OF RESTORATIVE JUSTICE

A further breakdown of data to identify the choice of restorative justice by taxonomy of victim shows that 11 (84.6%) of sexual offence victims; 16 (100%) of personal crime victims, 25 (83.3%) of property/economic crime, and 12 (80.0%) of victims of miscellaneous crimes indicate support for a 'face to face' approach compared to the indirect method of mediation. See chart below for statistical data analysis.

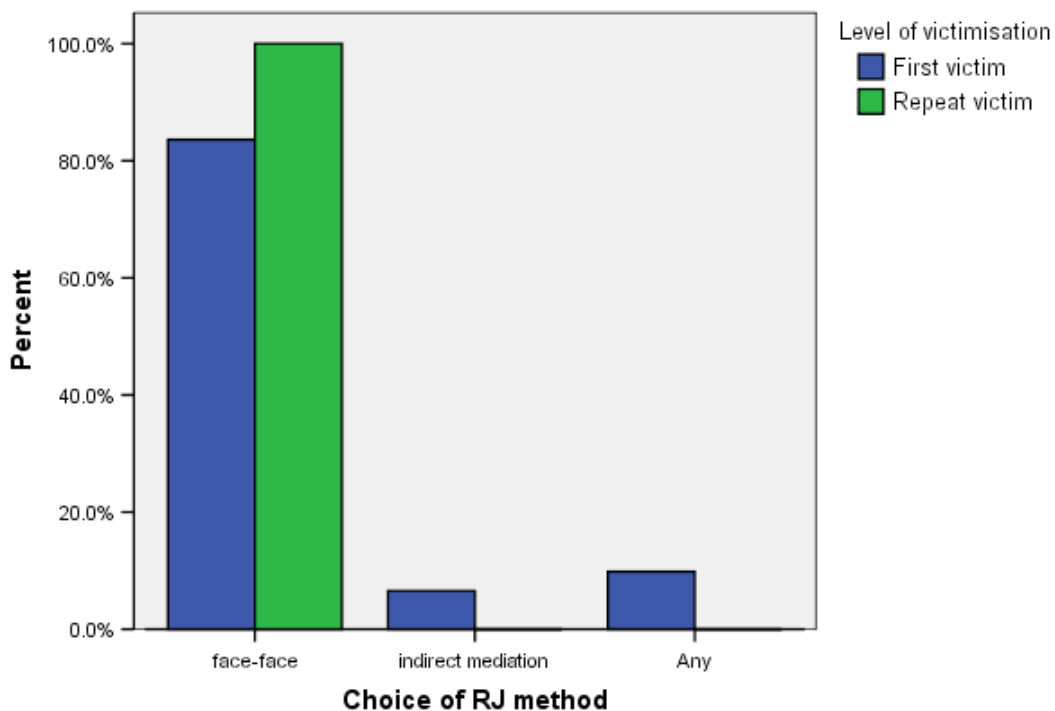
Fig.5.12. Taxonomy of Victimisation and Choice of RJ Method



LEVEL OF VICTIMISATION AND CHOICE OF RESTORATIVE JUSTICE METHOD

The study also attempts to find out whether the response of the 61 first victims and 16 repeat victims in this study would differ in terms of choice of restorative justice method. Surprisingly, the study found no statistically significant difference between the 61 first victims and the 13 repeat victims' choice of restorative justice. See the cross tabulation chart below for data analysis.

Fig.5.13. Level of Victimization and Choice of RJ Method



Whereas, further research need to be done to ascertain the motivation of victims' preference for 'face to face mediation' in this study, the findings and the surprising preference of victims in this study for face to face mediation perhaps support the argument by restorative justice advocates that healing and closure from the debilitating effects of crime and victimisation rest upon knowing as much and in-depth as possible a

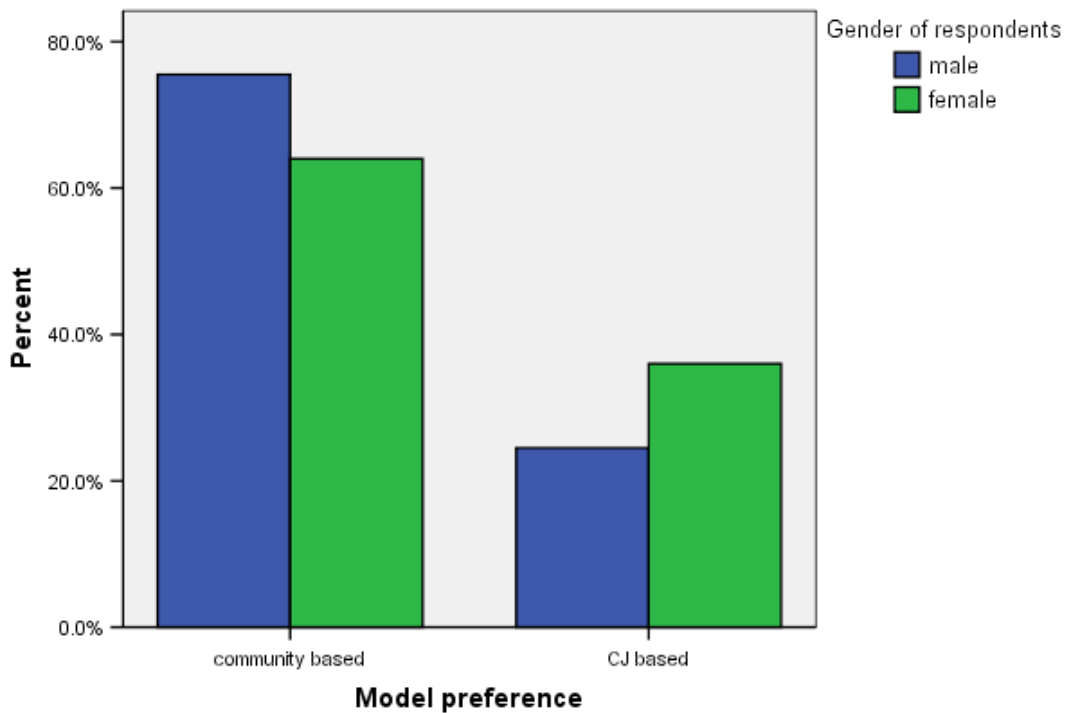
complete picture of ‘why’ the victim was chosen as target. Because, much of this knowledge which perhaps help victims to protect the future (as demonstrated in the qualitative findings) are more likely to be achieved in a direct mediation or face to face meeting of victims with offenders where necessary.

PREFERENCE OF RESTORATIVE JUSTICE MODEL BY VICTIMS

In view of the ongoing debate as to whether restorative justice should be contained in the criminal justice process or should be viewed as an alternative model, victims were asked to chose between: restorative justice programmes conducted in the local community, and supervised by NGOs, and lay people such as traditional chiefs, and religious leaders; and those conducted in the criminal justice contexts, and supervised by the criminal justice agents such as the police, magistrates, and prison officials.

This study found that 37 (75.5%) of male victims and 16 (64.0%) of female victims indicated their interest for a “community based” model while 12 (24.5%) of male victims and 9 (36.0%) of female victims indicated interest for a “criminal justice based” model. This finding thus would contribute to the debate in this regard. See the chart in the next page for data analysis.

Fig.5.14. Victims and RJ Model Preference



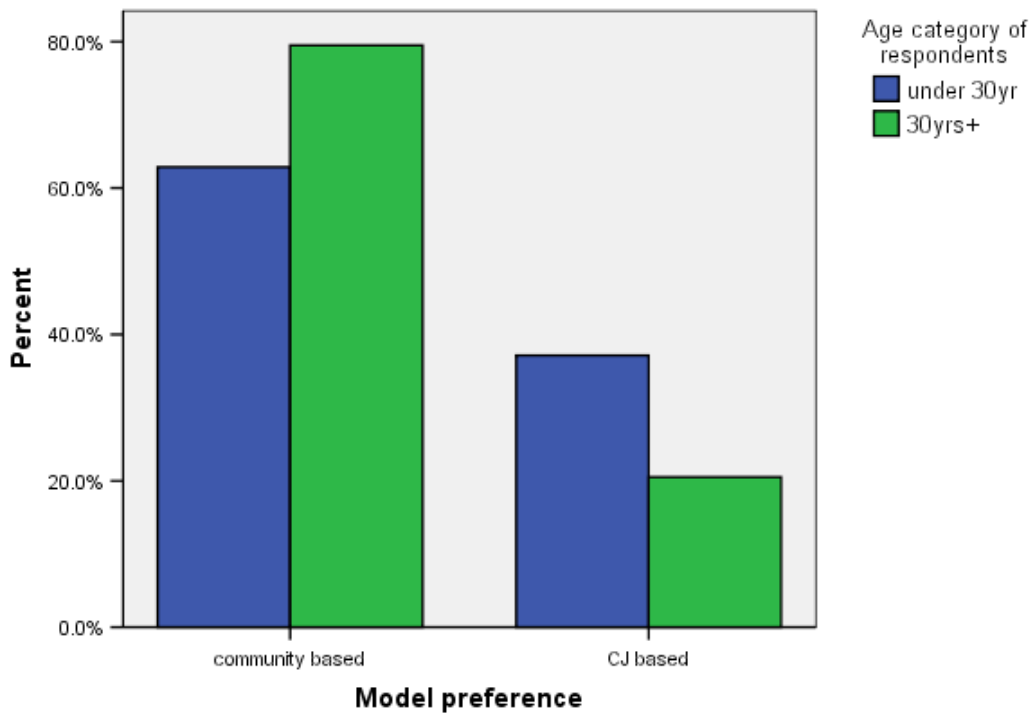
However, it is interesting to note, that although the respondents in this study indicate high preference for the ‘community based model’ compared to the ‘criminal justice based model,’ the pilot Alternative Dispute Resolution Projects rolled out in Nigeria in two judicial districts of Enugu, and Lagos at the time of writing up this thesis are ‘court based model’. The projects encourage Directors of Public Prosecutions in the two pilot states mentioned above to ‘front load’ case files under their jurisdictions to an ‘administrative court’. The judges of the administrative court in the pilot states review the case files submitted before it, and give legal opinion to the Directors of Public Prosecution to withdraw certain case files (based on substantive evidence), and inform the complainants or victims if they would be happy to get the cases dealt with in an ‘Alternative Dispute Resolution Court’. If the victim is happy about it, the case is disposed accordingly; otherwise the case goes through the conventional criminal prosecution.

Whereas, there are no evidence to critique the success or failure of the projects at this time, the researcher is however arguing that the objective of these projects are more likely targeted at quick dispensation of justice, load shedding of piled up cases in courts, and decongestion of prisons and police cells with associated human rights issues rather than fully ‘restorative’ resolutions perhaps. However, the pilot projects are creating grounds for restorative justice, and indicative of possible restorative justice projects taking off in Nigeria in the nearest future. The development also supports the findings of this study which has demonstrated high acceptability rate found across victims and criminal justice professionals in Nigeria.

AGE AND MODEL PREFERENCE

A breakdown of this data on age category shows that 22 (62.9%) of victims under 30 years of age and 31 (79.5%) of victims over 30 years old indicated support for “community based” restorative justice model (as simply defined in question 12 of the VQIS attached in the appendix) while 13 (37.1%) of the under 30 years and 8 (20.5%) of the over 30 years old victims indicated support for the “criminal justice based” model (also as simply defined in question 12 of the VQIS). See chart in the next page for data analysis.

Fig.5.15. Age of Victims and RJ Model Preference

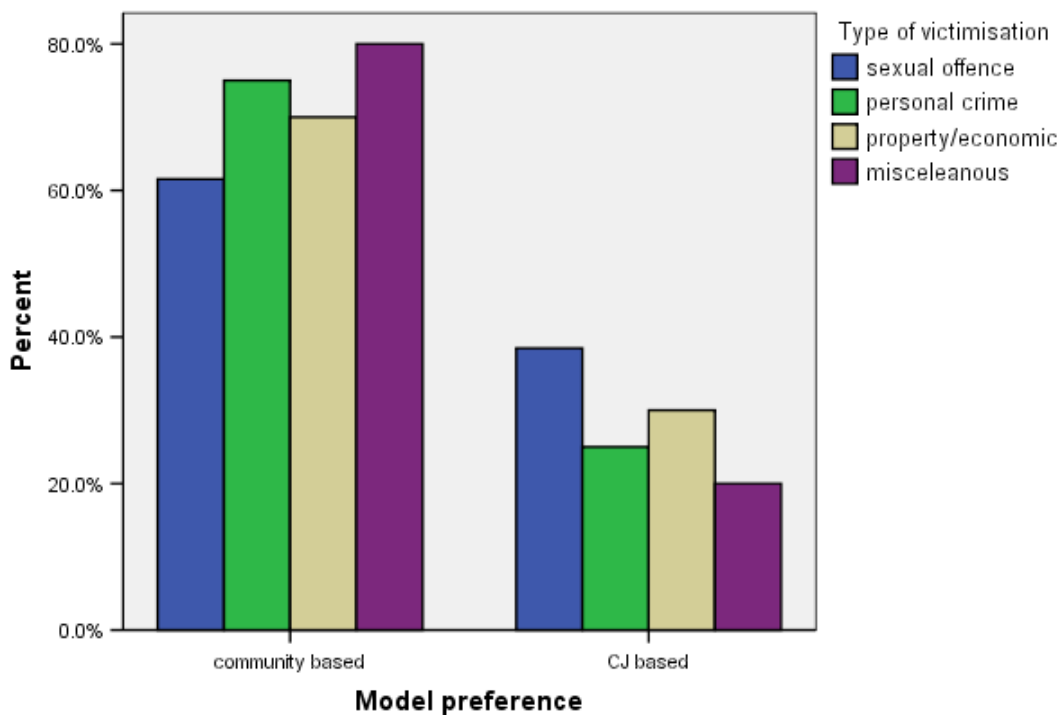


TAXONOMY OF VICTIMS AND MODEL PREFERENCE

This study also analyses the opinion of various category of victims to ascertain their model preference. Though some of the numbers in each category of victims are small (range: 8-21), the study found that 8 (61.5%) of victims of sexual crime, 12 (75.0%) of personal crime, 21 (70.0%) of property/economic crime and 12 (80.0%) of victims of miscellaneous crimes indicated support for “community based” model (where the term mean restorative justice project solely managed by local community, Non Governmental Organisations, traditional and religious leaders as simply defined and exemplified in question 12 of the VQIS), while 5 (38.5%) of sex crime victims, 4 (25.0%) of personal crime, 9 (30.0%) of property/economic crimes and 3 (20%) of victims of miscellaneous

crime indicated support for “criminal justice based” model (also as defined in question 12 of the VQIS attached in the appendix). The fact that the terms “community based model” and “criminal justice based model” are understood by the respondents is not in doubt because of their simplistic definitions and moreover, there was no illiterate respondent in this study as could be seen in fig.5.7. The chart below shows the data analysis.

Fig.5.16. Taxonomy of Victims and RJ Model Preference

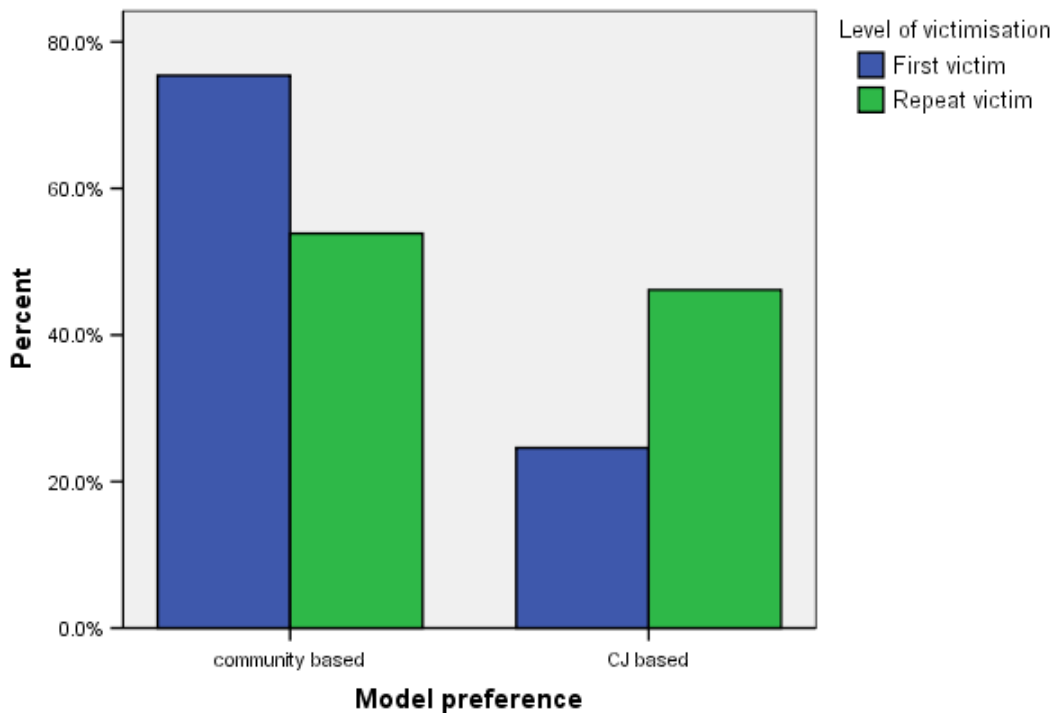


LEVEL OF VICTIMISATION AND MODEL PREFERENCE

The data below also shows the model preference for the 61 first victims and 13 repeat victims that participated in this study. The data shows that 46 (75.4%) of first victims and

7 (53.8%) of repeat victims indicated support for “community based” restorative justice model while 15 (24.6%) of first victims and 6 (46.2%) of repeat victims indicate support for “criminal justice based” model. See cross tabulation chart below for percentage statistics.

Fig.5.17. Level of Victimization and RJ Model Preference

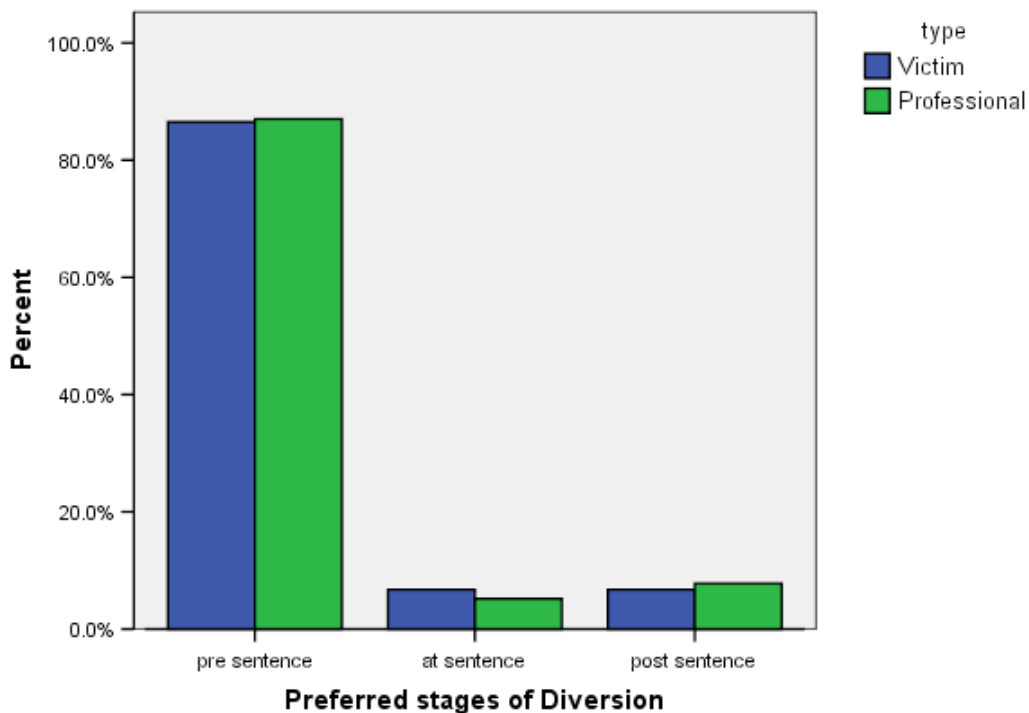


PREFERENCE FOR STAGES OF DIVERSION BY VICTIMS AND CRIMINAL JUSTICE PROFESSIONALS

This study further seeks the opinions of both victims of crime and the criminal justice professionals to indicate their preferred stages of diversion of cases for mediation. The study found that out of the 74 victims, and 77 criminal justice professionals, 64 (86.5%)

of victims, and 67 (87.0%) of the criminal justice professionals indicated interest for diversion and mediation at pre-sentence stage (simply defined in the questionnaire as when the accused accept guilt, and show remorse); and 5 (6.8%) of victims and 4 (5.2%) of professionals would recommend diversion at court (simply defined in the questionnaire as when the accused plead guilty and ready to recompense). However, another 5 (6.8%) of victims would like to meet their offender for mediation at post sentence (after sentences have been passed, or the offender might have served time), and 6 (7.8%) of professionals would also recommend mediation at post sentence. The fact that respondents (victims and professionals) understood the above terms and stages is also not in doubt because of the literacy level of the respondents and the simplistic definitions of the terms as could be seen in the questionnaires attached in the appendix. The findings thus show some indication of the possibility of prison restorative justice project in Nigeria. See chart below for the analysis.

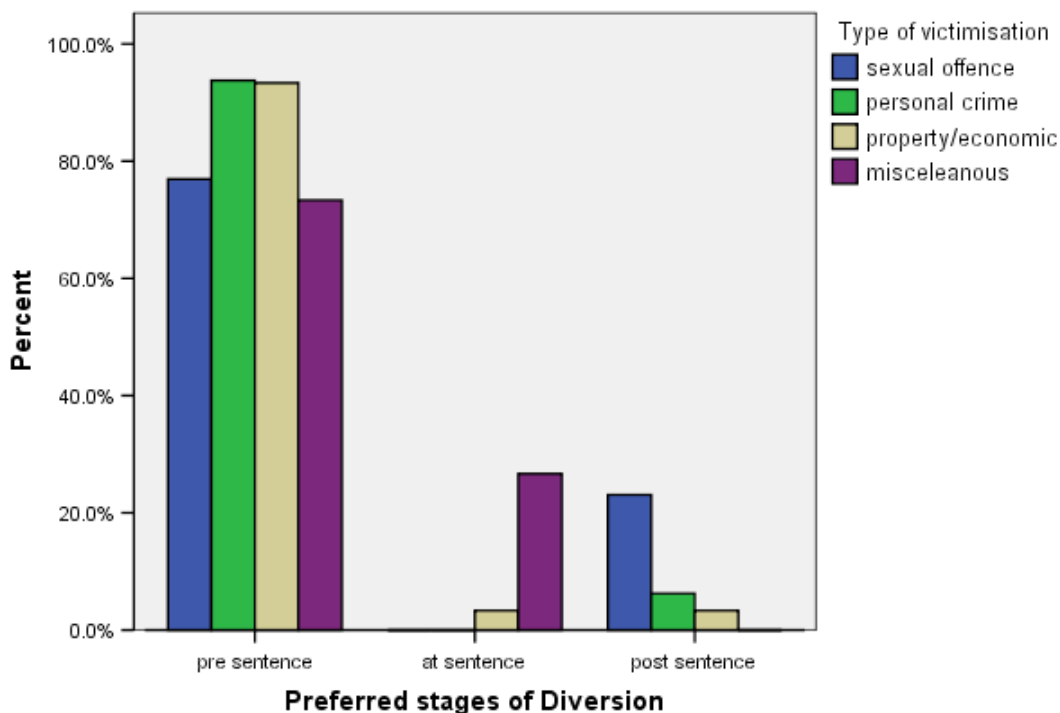
Fig.5.18. Chart showing Diversion Preference by Victims and Professionals



TAXONOMY OF VICTIMS AND STAGES OF DIVERSION

In a further breakdown of data to identify the preference for stages of diversion of the various categories of victims that participated in the study, the study found that 28 (93.3%) of property/economic crime victims, 15 (93.8%) of personal crime victims, 10 (76.9%) of sex crime victims, and 11 (73.3%) of victims of miscellaneous offences indicated interest for the pre sentence stage. While 3 (23.1%) of sex crime victims, 1 (6.2%) of personal crime victims, and 1 (3.3%) of property/economic crime victims might like to meet their offenders at post sentence stage; and 4 (26.7%) of miscellaneous crime victims, and 1 (3.3%) of property/economic crime victims would prefer mediation at sentencing stage. See chart below for cross tabulation analysis.

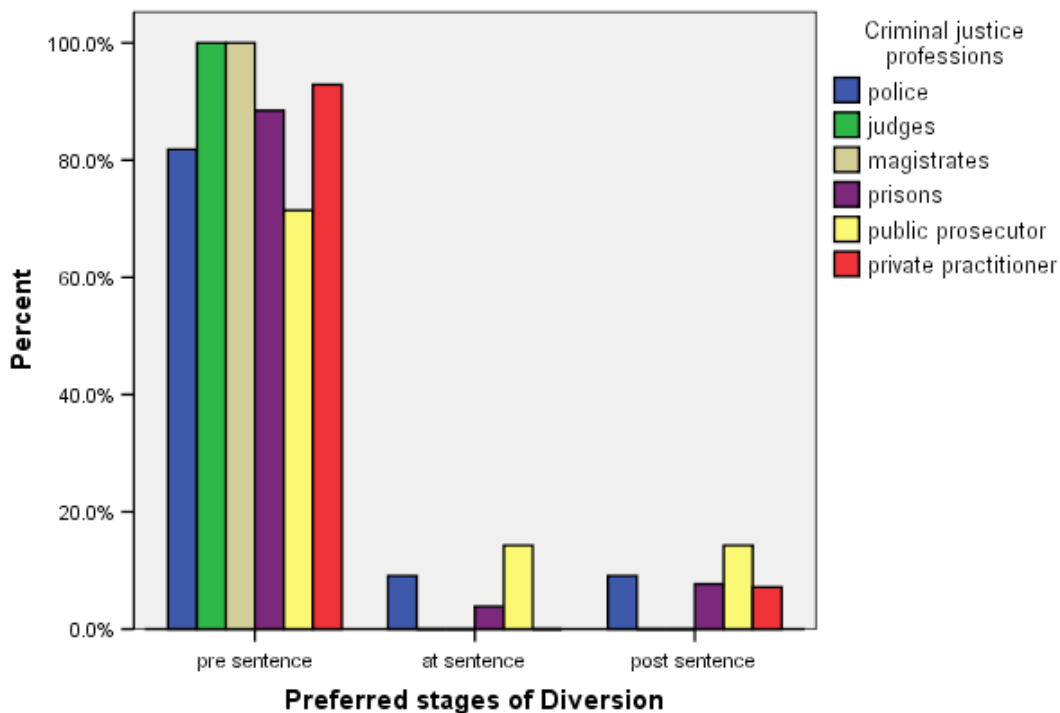
Fig.5.19. Taxonomy of Victims and Stages of Diversion



DIVERSION PREFERENCE ACCORDING TO PROFESSIONS

To ascertain the diversion preference of the 77 criminal justice professionals according to professions, the respondents professions are broken down as follows: police= 22, judges=4, magistrate=4, prison officers=26, public prosecutor=7, and private practitioners=14. Out of these figures the study found that 18 (81.8%) of the police, all the 4 (100%) of judges and magistrates respectively, 23 (88.5%) of prison officers, 5 (71.4%) of prosecutors, and 13 (92.9%) of private practitioners indicated interest to divert cases at pre sentence stage. While 2 (9.1%) of police officers, 1 (3.8%) of prison officers, and 1 (14.3%) of public prosecutors would recommend diversion of cases at court (when offender plea guilty and ready to recompense). And 2 (9.1%) of police officers, 2 (7.7%) of prison officers, 1 (14.3%) of prosecutors, and 1 (7.1%) of private practitioners would recommend restorative meeting at post sentence. See charts below for cross tabulation data.

Fig.5.20. Chart showing Preference of Diversion Stage according to Profession



The findings of this study are generally positive; however they should be taken with caution because of the small numbers used in the analysis of the quantitative data herein. However, the qualitative data presented in the subsequent chapter of this thesis give us the insights into why respondents in this study say what they say. An integrated discourse of the quantitative data and the qualitative data is presented in the discussion chapter to give a holistic understanding of the findings of this study.

CHAPTER 6

QUALITATIVE FINDINGS

Following the findings in the quantitative data analysis in chapter five, this chapter of the findings presents integrated qualitative opinions of victims of crime, and the criminal justice professionals in Nigeria with regard to their acceptability of restorative justice as an alternative to prosecution or otherwise. This ‘between method’ triangulated survey is done because the researcher want to explore whether there are divergence and congruence opinions between the various criminal justice professionals that victims encounter during the judicial process, vis-à-vis the expressed opinion of victims of crime themselves. The researcher sought to better understand the opinion of the criminal justice professionals which includes: police officer, prosecutors, lawyers, magistrates, judges, and prison officers who are strategic professionals in the administration of criminal justice in Nigeria with regards to the criticisms that many a times victims of crime enter the criminal justice system in Nigeria following their victimization, and often times their experiences of the court processes conflict with their expectations. In view of this, several human rights and justice advocates have criticized the damaging effects of the judicial process on victims of crime. Others have advocated for changes in the justice system such as victim impact statements, increase recognition of victim needs, and an outright alternative to criminal prosecution in the form of restorative justice.

Hence, the criminal justice professionals were interviewed with the ‘Professional Questionnaire Interview Scheme’ (PQIS) to determine their likelihood of recommending restorative justice as an alternative model of prosecution or otherwise, and the victims were interviewed with the ‘Victims Questionnaire Interview Scheme’(VQIS) to ascertain their likelihood of participating in restorative justice or otherwise. The various reasons given for their acceptability or otherwise are presented here qualitatively but classified into thematic subgroups. How the themes emerging from the qualitative data is generated is presented and discussed in chapter four under the data analysis section.

The discussion of the findings in the subsequent chapter is predicated on analysis of the themes accompanied by quotes from respondents' viewpoint where necessary. Although the qualitative findings below are presented on thematic bases, they are however, not distinct because the thematic groupings overlap and are sometimes interrelated. However, to get insights into the phenomenology of why respondents say what they said, some transcribed quotes from respondents are presented under some themes below. The fully transcribed qualitative data are attached to the thesis in the appendix.

QUALITATIVE FINDINGS: 1

Reasons why victims might want, or not want to participate in restorative justice in Nigeria are presented in Table 6.1 and discussed under the themes below.

Cost and Time Benefit Analysis/Quick dispensation of justice.

To some victims that participated in this study, the cost and time it takes to prosecute a case in the Nigerian courts might have significantly influenced their responses for an alternative dispute resolution mechanism such as restorative justice. For instance, a victim of civil debt, whose interest is on debt recovery, did not see the reason going to court and spending time and money in cases like that if it could be resolved through an alternative means. This need for quick dispensation of justice, and to save time and money is expressed in the transcribed quote:

No need to rush cases to courts because of waste of time and money, and risk of transportation. There will be no fear of my offender after serving his sentence. That will help harmonise me and the offender and my neighbours. When a mediator comes between me (victim) and the offender, it is very likely that I will have my money back correctly in spite of time wasted (VQIS001-Civil debt).

In another instance, a respondent think that an alternative dispute resolution mechanism such as restorative justice does not waste time, and does not make the victim a loser compared to the conventional criminal court. This need is expressed in the quote:

It (restorative justice) does not make victim a loser. It brings peace between both parties. No time wasted going to police and courts. It will give respect to culture and traditions (VQIS 023).

Similarly, another victim believes that to avenge a crime in the form of criminal prosecution cost more money and time than reconciliation and compensation which are more likely in an alternative dispute resolution mechanism such as restorative justice. This common sense fact is expressed in the quote below by the victim:

Personally, I do believe that it cost more to avenge a wrong than to reconcile. Moreover, allowing the offender to face up to his sins is the first step to his rehabilitation. So I will want apology and if he has the means of paying for the damage, I would request compensation (VQIS 051- Campus cultism)

In another instance, a secondary victim of ‘death by motor accident’ notes that resolving such serious offence by an alternative dispute resolution mechanism (especially when the offender is remorseful as it was in this case) is better because it save time, and other secondary pains associated with it if it was to be processed by the court (especially in Nigeria court). Although there might be a cultural or religious dimension to this form of choice expressed by this victim, it also demonstrates the time and cost benefit analysis when the quote below is carefully analysed:

If a matter can be resolve amicably why wasting time and money going to court, anything that gets to the police becomes law. In my own case, the driver was very remorseful. He did not run away from the corpse (accident scene). Others would have done that. He knelt there with his hands in blood up begging ‘it is my fault, please do not kill me’. We were tempted to hit him, but voluntarily we went with him and the corpse to the hospital. When my father was confirmed dead, he wept. He paid the mortuary bill, bought the casket and assisted in giving the old man a befitting burial (which is what my father would have wanted). What else would you have done to such a man? If you kill him in retaliation, you will carry double loads: your own sins and his own sins. So when the police came for prosecution we said, *ba lofi, lokochi yayi* (no case, it was his time) (VQIS 072-Secondary victim of motor accident)

To other victims, the needs to save time and cost, and for quick dispensation of justice coupled with the need to avoid negative victims’ experiences in the hands of some criminal justice agents in Nigeria, might have motivated them for the need for alternative to the conventional criminal justice proceeding in resolving their cases. These needs are expressed in the following quotes:

When you report an accused at the station they (police) will tell you to buy notebook and pen to write down your statement. They will tell you to buy petrol for the van to use for the arrest. If you are lucky and they arrest the suspect they will tell you to leave feeding money while the offender is in cell. You do all these and one day you see the accused person walking the street on bail without your knowing. Your life is in danger. You become the loser and the accused the winner. That is why most people now would usually leave everything to God because ‘if a blind man challenges you to throwing stones, be careful he might

have one under his feet'. These bad boys know that nothing would happen to them at the station. So let try something different (VQIS 068-Theft).

Moreover, in Nigeria, if a victim report a case to the police and the offender is arrested by the police it is the responsibility of the victim to pay out 'feeding money' to the police until the offender is formally charge in court. It is in view of this fact that a victim of fraud stated that:

It (restorative justice) saves cost in terms of feeding the offender, and court journeys. It helps in reducing congestion in prisons, police cells and courts. The victim is also compensated by the offender by returning the amount of money" (VQIS013-Fraud/419)

Harmony and Reconciliation of Dispute

In addition to the need to save time and cost, and for quick dispensation of justice, another theme that emerges as reason for victims' interest in restorative justice in Nigeria is for harmony, restoration, peace and reconciliation after dispute. This need is expressed in the quote below:

Resolution between me and the offender by the mediator is possible [and] Apology from the offender. Promise by the offender not to commits such habit again. It reduces enmity between me and the offender. Prevent stigmatization against (of) the offender (VQIS012-Burglary)

To some victims, this need for reconciliation and harmony is to enable them have peace of mind, and privacy after victimisation because very often victims are traumatised, experience secondary victimisation and are subjected to public scrutiny through media publicity. These needs and concerns are expressed in the following quotes for instance:

I would rather resolve the case before a mediator than the court to retain privacy. Since the perpetrator is my husband, I would prefer the matter is resolved privately with less aggression. I would like a one on one dialogue with him with the spirit of closure and to forgive him if he accepts guilt. This would solve the problem of: cost of litigation, lack of privacy, aggressiveness of litigation and expediency of action (VQIS 056-Battery)

To some victims this opportunity to reconcile with their offenders appears to give them some emotional and psychological healing as well. This is mentioned by this victim that:

“... [with restorative justice] I will have peace of mind. My life will be elongated when peace is achieved. Stress is reduced. Stronger friendships and ties are developed. I will stand right in the sight of God, if I forgive” (VQIS 033-Police brutality).

The need to get the truth from offender

Restorative justice is a truth seeking justice so the need to seek the truth of the matter from the offender is one important need that might have motivated some victims to like restorative justice and to participate in it. For instance, a victim says:

In my case, I want to ask questions and get answers. Because, in our society here, when something bad happens to you, the first thing some people would say is that ‘are your hands clean’. They want you to believe that may be the ‘gods’ or God is angry with you. If the offender says why he did what he did in the presence of my people they will know that my hands are clean. This will restore my dignity before my before and I may also stop accusing God for what has happened. This will make me happy again (VQIS 069-Sexual assault).

It appears that other victims believe that knowing the truth from offender is like a means of security measure which perhaps they can use to further safeguard themselves. This need is expressed in the quote below:

Personally, if an offender is apologetic and confesses of his sins, he should be spared imprisonment. If offenders are given opportunity like this, they are more likely to change, and say the truth without force. It will help me to know who sent him and to protect myself from future attack. The truth will be known because sometimes your best friend who knows much about your plans would use someone else to attack you while he will be the first person to sympathise with you. But if offender is brought before people and asked to say why he did what he did, people might know who is really behind the incidence. This knowledge would help me to be cautious of who to trust and how I tell my secrets to people. My property might be recovered (VQIS 073- Campus burglary).

To another victim of crime, the fear that truth could be silenced in the conventional criminal court especially in the hands of impartial judge make the need for truth seeking in restorative justice significant. This was expressed in the quote:

In our criminal justice system today, when money speaks the truth is silenced. So I would want face to face meeting with the offender to avoid misinterpretation of facts. With the help of the mediator the offender might realize his mistakes and might accept to pay back my loss (VQIS 066-Assault)

Another victim believes that resolution of dispute in the community is more preferable because truths are more likely to be told by the community leaders than the conventional criminal justice agents. This is exemplified in the quote below:

I want to settle the case and for the truth to come out. If it is police case, police will ask you whether you write your names on the yams (stolen items), if you say no, they will say how did you know that the yams belong to you? They will then convert the yams to their own. And you will be accused as a liar. They will also want you to 'settle' (bribe) them. The thief will defeat you if care is not taken.

The elders are more likely to say the truth than the other group (police). Because in our community here we have a saying in our Igalla tribe that: *Eka magbon, che ukwu imoto; Eli ma kan, che ukwu ogijo* (which literally means: not listening to elders' advise lead to death of youths and not saying the truth or covering truths lead to death of elders) (VQIS 039-Theft of farm crop)

Perhaps, the assumption of this victim is premised on the traditional belief among some Africans that the hottest place in hell would be reserved for any elder who sees truth and keep silent. However, whether community elders in modern times still keep to the traditional obligation of speaking the truth in the face of corruption is an issue that need further investigation in contemporary Nigeria.

Victims' voices to be heard

In addition to the opportunity mediation gives to victims to seek truths, victims also feel that mediation gives them the opportunity to express themselves and get their feelings acknowledged and voices heard. This discourse has led to trials of victim impact statement in some countries across the world in recent times. The following quotes for instance, seem to demonstrate the need for victims' voices to be heard.

It (RJ) will make me express my feelings to the offender directly in such a way that he will feel almost what I felt as a result of his action. And to place himself in my shoes so that he can stop it. It (RJ) will help me receive back what has been stolen from me. And to change the offender from his behaviour after being convinced of the evil of his action...to avoid sending the offender to prison after admitting his fault and returning the stolen goods (VQIS 003-Theft).

Another victim believes that coupled with victim's voices to be heard is:

Fair hearing and quicker justice.[With RJ] The victim is brought into the case and [it] gives sense of belonging which makes me happy" (VQIS 004-Victim of circumstance).

Compensation, Reparation, or Restitution

In addition to the above victims' needs, the need for compensation, restitution or reparation reflected fairly as one of the need victims require in restorative justice. Victims appears to believe that with restorative justice, they are more likely to get reparation than in the conventional criminal justice system where they have to initiate fresh legal battle for compensation and for costs to be paid to them by the offender where necessary. In some cases in Nigeria, when such compensation suits are filed, victims are sometimes disappointed on the ground of (a case of double jeopardy) that for instance, an offender cannot be serving term for an offence and still pay victim compensation for the same crime. In some cases, it is a case of "the bigger fish swallows the smaller ones". For instance, in an appeal case of *Nwosu versus Environmental Sanitation Authority* cited in the Nigerian Weekly Law Report, 1990 part135, page 688, a Judge of the Supreme Court (the highest court in Nigeria) advised victims of the right violations suit to seek redress elsewhere (see Yusuf, 2007: 276 for instance). So some victims appears to understand this complexity of seeking compensation in Nigerian courts hence the quotes here convey the message:

It (RJ) will make him (offender) feel the impact or guilt of what he has committed when we talk one on one. I will like the offender to understand his mistakes. To apologise and may be compensation" (VQIS002 Robbery).

And, another victim says "...The victim is also compensated by the offender by returning the amount of money" (VQIS013-Fraud/419)

In some cases victims' need for compensation is associated with emotional restitution through the request for apology from offenders. Examples of these needs are demonstrated in the quotes below:

...With this method people will know and hear the truth. They will stop accusing or blaming me unnecessarily, that I knew what was involved before I agreed to travel to Italy. With this method people may tell him to pay me all the money I worked for him. I can use this money to open my own shed (shop). And seeing the person who tormented my life and acted as 'small god' apologizing and begging me for forgiveness in the presence of Elders would be a victory at last (VQIS 026-Trafficking by deception)

To personally, hear from the offender why he should do that to me? Justice will be perfectly done if local community members are fully involved in the settlement. The offender would have no course to refuse paying compensation. He will not be seen as a victor any longer, and this will further deter him and other potential offenders from committing crime in the community where they resides (VQIS 061-Armed robbery)

The general themes that emerged from the qualitative responses given by victims that took part in this study can therefore be classified thematically in the following table.

Table 6.1 Victims Thematic Responses

REASONS FOR	REASONS AGAINST
Cost and Time Benefit Analysis	Does not believe reconciliation is possible
Quick dispensation of justice	Think legal justice is better
Harmony and Reconciliation after dispute	Because of enmity/ hatred for the offender
Healing the wound of crime	Want offender punished
Apology and forgiveness	Restorative justice is not for criminal cases
For compensation or restitution	No time for restorative meetings
To help offender change behavior	
For victims' voice to be heard	
To avoid victim blaming by the police	
For truth telling from offender	
Legitimacy issues	
To name and shame offender	
To ask offender 'WHY ME?'	
Distrust of the criminal justice system	
Fear of repercussion from prosecution	
For the repose of the souls of the dead	

From the above thematic presentations, it is clear that victims' needs in the criminal justice and in restorative justice vary. Accordingly, it is also clear from the victims' needs thematic table above that not all victims of crime would want to participate in restorative justice because as the thematic table, and the quantitative data in chapter five has shown, a minority of victims in this study does not believe reconciliation is possible after victimisation, others think legal justice is better disposed to handling their cases; others also believes that there is no need for meeting offender because of hatred for the offender,

and so they want the offender punished; others also think restorative justice is not suitable for criminal matters, and others think they have no time for restorative justice meetings.

However, what is interesting in this findings is that a majority of the criminal justice professionals in Nigeria that took part in this study share similar views with the victims who want to participate in restorative justice, and a minority of the professionals also think along the same line with the minority of the victims that did not want to participate in restorative justice. The reasons why the professionals said what they say are presented below.

QUALITATIVE FINDINGS: 2

A broad range of opinions from the criminal justice professionals whose roles are strategic to victims' satisfaction of the justice system in Nigeria are thematically presented below. Just like the victims' needs discussed above, the emerging themes as to why the criminal justice professionals might recommend, or not recommend restorative justice include:

Quick dispensation of justice, and Cost Benefit Analysis

Just like the victims, the criminal justice professionals in Nigeria similarly agreed that implementation of restorative justice in Nigeria would facilitate the dispensation of justice, and save cost and time as well. These opinions are reflected in the following quotes from the magistrates:

Mediation assuages the hurt feelings of the victim and allows the person who commits the crime appreciate the enormity of the harm he has done. I would advocate its introduction and implementation in every state in the country as it will lead to a faster and better dispensation of justice (PQIS 004-Chief Magistrate)

Another magistrate also agreed that:

Mediation is faster. Everybody male or female is amenable to change. The aggrieved party gets compensated faster than in the courts which take longer” (PQIS 005-Chief Magistrate).

Similarly, another magistrate who believes perhaps from experience that the criminal justice system is expensive stated that:

Modern international discourse encourages social inclusion and cohesion as the way forward to achieving the Millennium Development Goals (MDGs). How could we achieve social inclusion when we continue to strictly hand on to a justice system that encourages social exclusion, and disharmony among parties concerned? The costly criminal prosecution should only be reserved for those who are dangerous to society and cannot be safely controlled by the community (PQIS 057-Magistrate).

A private practitioner also seems or appears to blame the death of one of his clients to unnecessary delay and incessant adjournment of court cases when he said:

My response is based on a personal experience. I have a client whose half elder brother (of the same father but different mother) did not want to relinquish any of their late father’s landed properties. He took this case to court to enforce his fundamental human rights to the inheritance. This case has been lingering on. On this occasion, my client who has to travel all the way from Kaduna to attend court hearing has to return back to Kaduna after the case was adjourned subsequently. On his way back to Kaduna, his vehicle was involved in a fatal accident of which he lost his life. Would the family relationships ever remain the same again? (PQIS 001-Lawyer)

Another lawyer notes that the implementation of restorative justice in Nigeria would help decongest cases in court as he states that:

It will go a long way towards solving the ever increasing court cases and litigation costs. The offender can be easily changed, amenable and distracted from committing further crimes. It will bring both parties together towards reaching a speedy and timely resolution of conflict (PQIS 061-Lawyer)

Similarly, prison officers who bears the burdens of the failure and delay in prosecution and sentencing of offenders by the other segments of the criminal justice system mentioned the possibility of restorative justice implementation in Nigeria relieving them of this burden as it is was reflected in the following quote:

If cases are taken to courts, justice is delayed and the offender suffer more than necessary or kept in Awaiting Trial Cells for too long period of time. It reduces the number of cases to be tried in court; decongestion of Awaiting Trial Cells. (It will also helps) for correction and reintegration of offenders into the society; to prevent the police arbitrary use of power, intimidation and harassment, (and) for instant reconciliation and restoration (and), direct forgiveness from the victim. The convict is made to feel sorry (PQIS 068-Prison officer)

Harmony and reconciliation of victims and offenders

In addition to the potentials for quick dispensation of justice, and saving cost and time, a cross section of professionals (police and prison officers) also believe that implementation of restorative justice in Nigeria would enhance reconciliation of victims and offenders. This potential and value of restorative is expressed in the quotes below:

Restorative justice is less cumbersome. It ensures harmonious co-existence. The system will help to bring the victim and offender together again especially where they are related. At the restorative justice stage, it is easier to forget and forgive in simple matters than when the courts have gone into the details of evidence (PQIS027-Prison officer).

It (RJ) looks religious in nature. It could reduce violent crimes and reconciles the citizenry to understand need to keep to the law. Restorative justice seems to remind individual offenders to reconcile or face the music of the law. It could reduce the further commission of crime (PQIS-029-Police officer)

Perhaps from personal work experience, a police officer mentioned that:

Criminal justice does not bring everlasting solution to the problems encountered by some victims. Imprisonment does not really curtail about seventy per cent of criminals from repeating the act. Rather it serves as a breeding ground for more sophisticated crime. A person will find the justice system benefiting when he/she has not gone to court. A person who has faced trial in the court has become more harden and may not understand easily the benefit of the system (PQIS 028-Police officer).

Another police officer believes that from experience victims tends to seek settlement with offenders in some cases when he said that:

As law enforcement agents we know what happened to victims when we arrest and prosecute. But we do not know what goes on in the mind of the offended. Most victims of crimes today, wish to see that there is settlement between them and the perpetrators. E.g. in cases of cheating, stealing or criminal misappropriation, manslaughter in accident cases, etc (PQIS 075-Police officer)

Encourage offender to tell the truth

In addition to the above potentials of restorative justice, some professionals also believe that restorative justice would encourage truth telling on the part of the offender compared to the conventional court where lawyers speak for offenders and sometimes reinforce

offenders to deny, and lie so as to win cases. The potential of truth telling is exemplified in the following quote from a member of the Department of Public Prosecution (DPP):

From experience, most crimes committed are not well investigated. Some accused person plea out of fear, and some having been tortured at the police cell, tends to agree to any suggestion. But where rooms are given for mediation, we might find out reasons and truths (PQIS 034- DPP)

A police officer also acknowledges that truth telling from offender in restorative conferencing has the potentials of helping them in intelligence gathering and investigation of crimes. This suggestion exemplified the crime preventative value of restorative justice as mentioned in the following quote:

Crime today is a syndicated thing. Sometimes or most often, the people we arrest committing the crimes are agents and not the gang masters. Crime cannot be eradicated by arresting and punishing the 'hopeless boys'. We can only eradicate or control crime by getting to the real masters. Perhaps this 'story [truth] telling justice' would help us get to the masters of the bad boys. This form of justice is likely to help the police in crime investigation and intelligence gathering because truths are more likely to be told as a form of mitigation for non prosecution (PQIS 077-Police officer).

Victims' Participation in the Justice Process

In addition to the truth telling mechanism of restorative justice, one police officer thinking like a restorative justice advocate believes that restorative justice could enhance victims' participation in the justice process. This idea is reflected in the quote below:

It makes for a more humane approach to and treatment of offenders, afford the victim the opportunity to express his/her feelings kindly to the offender. It also makes the offender realize that he did not only hurt the State, but a human being like him and leads to true remorse and repentance (PQIS 019-Police officer).

Compensation, reparation or restitution to victims

Just like victims, professionals also believe that restorative justice could make compensation, restitution or reparation possible to victims compared to the conventional criminal justice system perhaps. This is demonstrated in the following quotes:

I am very much in support of restorative justice programme taking off. It will make the offenders feel the impact of being accountable or restoring for the losses themselves thereby reducing over indulgence in crimes, since it might demand paying the person being offended (PQIS 014-Prison officer).

Another note that restorative justice could help in reduction of crime when he mentioned that:

I think it will reduce crime if an offender remembers he will have to face the pains of restoring losses and /or pain caused others. Imprisonment is a penalty paid to the state so, after an offence the victim should be compensated by the offender (PQIS 012-Prison officer)

A magistrate also acknowledges that compensation for victims of crime would deter offenders from committing crime because the absence of restitution in the Nigeria justice system make some hopeless offenders to commit crime so as to go to prison and eat free foods which they may not have the opportunity to eat if they were out in the community. This idea is reflected in the following quote:

When individuals know that they will pay for their crimes in monetary terms, they will shun crime. Some commit crime so as to go to prison and eat free food (PQIS 006-Chief Magistrate)

A member of the Department for Public Prosecution (DPP) talking from a personal experience perspective also mentioned that compensation appears to appeal to some victims rather than imprisonment of their offenders. This was exemplified in the following response:

The programme should be given a serious thought. We often hear crime victims lamenting that sending the offenders to jail do not restore the damage done to them. (And) from practical experience, once an accused is convicted and about to be sentenced, the reality of his/her actions dawns on him/her and this is irrespective of the age of the accused. At that point he/she is ready to remedy, i.e. if remedy is possible to the damage done (PQIS 023-DPP)

The overall themes that emerged from the qualitative responses of the criminal justice professionals that took part in this study can therefore be classified thematically in the following table.

Table 6.2 Professionals' Thematic Responses

REASONS FOR	REASONS AGAINST
For quick dispensation of justice	Fear of loosing jobs (defensive solidarity)
Reconciliation of victims and offender	Crime is a 'state' business
For offender to learn victim empathy	Not suitable for all kinds of crime
Accountability/responsibility for action	Seen as an 'easy justice'
A crime prevention/control strategy	Would make offender see crime as 'low risk, high dividend' behaviour
Because deterrence does not deter	
Compensation for victims of crime	
Help decongest courts, prisons/police cells	
Victims' participation in the process	
Crime control economics/Cost Benefits	
Encourage youth/ community development	
Help reform the justice system	
Help the police in crime investigation and intelligence gathering	
Encourage offender to tell truth	

A careful look at the above table show similar streams of themes like those in the victims' thematic table. This is an indication that there are congruence of opinions between victims' viewpoints and that of the professionals in Nigeria that participated in this study.

It is however imperative to note that just like victims of crime, not all criminal justice professionals that took part in this study believe in the potentials of restorative justice that are presented above because as the professionals' thematic table above has shown, there are a minority of professionals in this study who think restorative justice challenges the fundamental principles of law and therefore is a threat to their power and stronghold, others think crime is a 'state business' and therefore the state should be left alone to do its business, others also think that restorative justice is not suitable for all kinds of crime; and some have argued that restorative justice is an 'easy justice' that would make offender see crime as 'low risk, high dividend' behaviour.

However, these findings relatively contribute to the debates on the issue of victims' needs and aspirations for participation in the justice system (including restorative justice) which

has generated a lot of controversy in restorative justice literature. Because, often, the questions have been ‘what exactly do victims want in the justice system (including restorative justice): Restitution, monetary reparation or compensation? An apology and reconciliation (be it face to face or indirect), A better understanding of why the offender committed the crime and, or choose them as target? Some kind of accountability and responsibility by the offender and, or his family? Retribution, vengeance or community service, or do victims simply want to be left alone to bear the wounds of crime?

From the above findings, it is clear that the answer to what victims want in the justice system is diverse and complex and perhaps depends on the individual victim’s understanding and conception of ‘justice’. Because, to some people, ‘justice’ is conceived as “what the law says”. This conception of justice raises the question of “just and unjust laws”. And it brings into the fore the legitimacy of the institutions implementing and promulgating the law. To other people the understanding of justice is premised on the perspective that “whatever society conceives as justice is what justice is”. This understanding which is also known as the moral or evolutionist school of thought believes that justice is “the collective will of society”. However, there are potential dangers associated with this should the ‘collective will’ of a society misrepresent justice as vengeance or vindictiveness (like the manipulation of the BAKASSI boys in Nigeria in the late 1990s). Another understanding of justice (which human rights law drew a lot of inspiration from) is the ‘Biblical justice’ or the ‘naturalist school of thought’. It argues that human beings are creations of God and because of this, creation should not be violated (also see Onuoha, 2007). Thus, what constitutes justice to each victims of crime might be at the heart of the reasons of why victim would want to participate, or not to participate in restorative justice, and what the anticipated benefits are.

From the findings of this study therefore, it appears that on the journey of victimization, some victims travel on similar routes and, others on divergent routes but aim at a single or similar outcome-justice. In a nutshell, victims’ routes to achieve satisfaction in the justice system are as diverse as the faces and personalities, and the psychosocial dynamics of the victims themselves. In this study for instance, some of the expressed needs mentioned above by victims in the findings which also reflect the opinions of a

majority of the professionals, are culture and or religion specific, while others are relatively economic, social and psychological in nature. A careful analysis of the above transcribed qualitative data, or quotes in this chapter, might give us some insights into these phenomenology. So there are several socio-psychodynamic perspectives to victims' needs in the justice system and thus, there are no "cap fit all" answers.

However, as the findings of this study has demonstrated most victims' need for participating in the justice system (including restorative justice) and reasons for not, falls under one or more of the above thematic discourse. Although most respondents in this study are positive about the restorative route to justice, the researcher is however arguing that the appropriate justice model suitable for victims' satisfaction is one that is flexible and provides opportunities for satisfaction of both 'normative needs', and 'felt needs' as well as gives victims the choice of: restoration versus retribution where and when necessary. In the Nigerian context, the reasons why the majority of the respondents in this study are positive about restorative justice are analytically discussed in the following chapter.

CHAPTER 7

DISCUSSION

Evidence from the literature review, and the findings of this study that are presented in the previous chapters of this thesis has shown that restorative justice, mediation and, or Alternative Dispute Resolution have become attractive and an acceptable global concepts in contemporary times (including Nigeria). Hence, there is the need for increasingly international comparative research aimed at sharing effective practice and best evidence across cultures and international borders. This has become imperative to bridge the North-South academic inertia. In restorative justice research for instance, Africa with its long standing tradition of communitarianism and inbuilt Alternative Dispute Resolution mechanisms have lots to share with the West as much as it is ready to learn from the West, and other cultures.

This particular study on restorative justice which interviewed one hundred and fifty one (151) respondents: seventy four (74) victims of crime and seventy seven (77) criminal justice professionals in Nigeria is aimed at contributing the African perspective to the international discourse on restorative justice and victims' participation debate. Though the study used a relatively small number of respondents in Nigeria with a population of about 140 million people (men=71.7million; and women=68.3million), and a multi ethnic nationality of about 300 ethnic groups, the findings of this study however give us insights into the expectations of some of the people who use and apply the law, and how the people might want their kind of justice system to act and look like.

The study found a high rate of support for restorative justice (as understood by respondents), and there are congruence of opinions and expectations among the stakeholders involved in this study. That is, 81.1% of victims of crime and 81.8% of the criminal justice professionals in Nigeria think restorative justice initiative is a good alternative dispute resolution mechanism. This overwhelming support for restorative justice by victims and criminal justice professionals in Nigeria cut across gender, age, education, taxonomy of crimes, religions, locality and ethnic affinities (see the findings

chapters). The findings of this study are in line with other cross-national research and evaluations of restorative justice by Strang *et al* (2006) which consistently concluded that victims of crime are better off after participating in restorative justice compared to the criminal justice process. This is regardless of the kind of victimisation they have suffered, the kind of community they live in, the point in the criminal justice process, and or the physical location of the restorative conferencing (see Strang *et al*, 2006:304 for instance).

However, the findings of this study are more positive compared to the survey of magistrates and prosecutors conducted in South Africa by Naude and Prinsloo (2005). Though 81% of the respondents in the South Africa study agreed that the main aims of restorative justice was to sensitise the community to prevent crime through positive interventions, overall, the authors found that ‘respondents were far more uncertain about restorative justice as a sentencing option than they were about the aims of the approach’ (Naude and Prinsloo, 2005). The findings of the South Africa study was interesting but surprising considering the fact that the South Africa Truth and Reconciliation Commission was seen as a model of restorative justice around the world and particularly in Nigeria; or was the responses of the South African magistrates and prosecutors a reflection of what Young (2003) calls ‘defensive solidarity?’

Meanwhile the findings of the Nigeria study presented here might have differed significantly from the above because, participants in this study have not really experienced the working mechanisms of restorative justice in practice and therefore might not be capable to decipher the strengths, weaknesses, opportunities and threats (SWOT analysis) of restorative justice in practice. However, the findings are interesting but are equally unexpected because of the “assumed” volume of crimes and the rate of violent conflicts in the country at the time of the research (for instance, hostage takings and demands for ransoms of oil workers in the Niger Delta; oil bunkering and petroleum pipeline vandalism, vandalisation of electric cables, political corruptions and murders, and proliferation of youth crimes such as: 419/fraudsters, robbery, amongst others). With the plethora of crimes such as those mentioned above what could have been the

motivation of respondents for the overwhelming acceptability of restorative justice in this study?

Theoretical explanations

As the qualitative responses in the previous chapter and the findings of this study has demonstrated, one general and possible theoretical explanation to explaining the overwhelming response could perhaps be the theory of ‘learned helplessness’ (see Seligman *et al*, 1978) in view of the critical opinions expressed on the failings of the current criminal justice system in Nigeria (also see literature review). The ‘learned helplessness’ theory by Seligman *et al* (1978) was originally a psychological theory of learning and remembering developed and applied to dogs tested in a shuttle box with a divider separating two sides. In the experiments, dogs, which were shocked learning on one side of the shuttle box eventually jumped over to the other side, and finding that they were not shocked there, learned the jumping response therein. However, dogs who were shocked uncontrollably in the shuttle box failed to learn the jumping response because they feel helpless, and thus see no need for subsequent efforts. Seligman *et al* (1978) modified this theory to human experiential learning thereafter.

Relating the learned helplessness argument to explaining the findings of this study, the researcher is arguing that, if individuals or group of persons (like victims of crime in Nigeria for instance) have previous negative experiences (in this case of the justice system) which demonstrate that their actions do not have impact (as a crime control mechanism), they anticipate that their subsequent, or continuous actions will not yield any helpful result and this inhibit their enthusiasms to participate in future related events. For instance, like some victims have demonstrated in their qualitative responses, there are a number of victims of crime who go into the criminal justice system thinking that the justice process of conviction and sentencing will somehow take away the pain and all other issues they are dealing with. But find, to their surprise, that long after the case is closed many of the things that were burdening them remain strongly with them. Perhaps, there is a lot of disappointment that comes with that, because some of the victims would have thought that the court process is somehow going to bring an end to the pain or the

fear they are dealing with. Perhaps also, what the victims do not know is the limits of the justice system to actually deal with some of the fundamental psychological effects of victimisation owing to the fact that the justice system as it is presently constituted is not set up to deal with emotional traumas that result from victimisation.

For instance, a study conducted by Regehr and Alaggia (2006) found that criminal justice professionals do not see that healing was possible in the justice system and thus should not be expected to contribute to victim healing. This attitude is exemplified by the following statements made by the criminal justice professionals that took part in the research: 'I don't think there's any requirement for the court to become engaged in helping victims once the case is finished. That is not our mandate'. Another respondent stated that 'It's not part of my job as a judge. I have some reserve of compassion, but I am not there to heal people, I don't know how'. Moreover, the criminal justice respondents stated that 'in the criminal justice there is no victim to be assisted-the issue is whether a crime has been committed-there can be just one outcome' (see Regehr and Alaggia, 2006:41). From those responses, the authors concluded that it is clear that the criminal justice professionals see their roles specifically as agents of the court and view the justice process in which they are involved as not intended to accommodate the notion of victim healing. This argument is also supported by the response of a criminal justice professional (police officer) in this study who state that: 'as law enforcement agents we know what happened to victims when we arrest and prosecute. But we do not know what goes on in the mind of the victim'. Similarly, a member of the Department for Public Prosecution who participated in this study in Nigeria appears to testify to this difficulty when it is stated that:

Restorative justice should be given a serious thought. [Because] we often hear crime victims lamenting that sending the offenders to jail do not restore the damage done to them. [And] from practical experience, once an accused is convicted and about to be sentenced, the reality of his/her actions dawns on him/her and this is irrespective of the age of the accused. At that point he/she is ready to remedy, i.e. if remedy is possible to the damage done (PQIS 023-DPP)

Meanwhile, victims has demonstrated in the literature review, and victimological evidence cited in previous chapters that the 'felt needs' of compensation, reparation or

restitution are more likely to contribute to their satisfaction in the justice system. Findings from victims in this study as expressed in the qualitative findings chapter have also demonstrated support for this. Perhaps this inadequacy of the criminal justice system professionals to understand this psychodynamic need of victims appears to be emotionally hurting the victims when they seek justice in the conventional courts, and therefore might want to support something like restorative justice which might be able to address this inadequacy? One could thus argue that it would appear to be a disservice to victims of crime in Nigeria (as the findings have shown) if they are to be prevented from participating in restorative justice and the potential benefits associated with it if they wish to.

Another theoretical discourse to why the acceptability of restorative justice was high among the Nigeria respondents in this study could be linked to the “cultural relativity” of the concept of restorative justice and their understanding of it. As the researcher has argued in the literature review, the principles, values and philosophy of restorative justice appear to be traditionally congruous and culturally relative to some restorative traditions and belief system of the respondents. For instance, Jenkins (2006) argues that African cosmology (worldview) sees crime as a person violating another rather than the state, and thus there are social and moral requirements among the people to reconcile the individuals; coupled with the African axiology (the values for restoration and harmony among disaffected people); the African ontology (how they describe human nature and concept of personhood), and the African epistemology (their source of knowledge of what ‘justice’ means). Perhaps, this is why their responses to the understanding of the concept of restorative justice were described as ‘native or traditional justice’, and ‘customary law’ or ‘informal justice’ as exemplified in the survey findings presented in the previous chapter. So for them to have been positive about restorative justice they might have equated the concept with their understanding of the values, principles and philosophies of African restorative traditions discussed in the literature review. The findings of Naude and Prinsloo (2005) in South Africa also appears to support this argument as 81% of magistrates and prosecutors thought that the main aims of restorative justice was ‘to sensitise the community to prevent crime through positive

interventions,' even when they were not too positive about restorative justice serving as an alternative to sentencing.

The cultural relativity discourse therefore appears to be relevant to the acceptability of restorative justice in this study as a victim claim that restorative justice would dispose victims to practice their restorative religious virtues, and restore respect to the peoples' culture and traditions. Some other victims have demonstrated confidence in the potential of their traditional elders to handle the resolution of conflict without fear or favour and for truth, as a victim of farm crop theft believes that:

The elders are more likely to say the truth than the other group (police). Because in our community here we have a saying in our Igalla tribe that: *Eka magbon, che ukwu imoto; Eli ma kan, che ukwu ogijo* (which literally means: not listening to elders' advise lead to death of youths and not saying the truth or covering truths lead to death of elders) so elders are always very careful not to soil their hands (VQIS 039-Theft of farm crop)

In the same way a victim of common assault below appears to demonstrate an African common sense to the resolution in his case rather than taking his case to court for criminal prosecution. Though his response below might appear to look like he was a weak or fearful person, his sense of judgment however might have been premised on what justice means to him and his values for reconciliation, and respect for constituted traditional authority as exemplified in the quote below:

If a case can be settled by the elders why rush to court? A wise man controls his temper and weighs the advantages and disadvantages of any action. If I take the offender to court, he might fight my offspring diabolically. So one need to think of what would happen after court case. But if the offender is an unapologetic, the case would be taken to court (VQIS 048-Assault)

Some criminal justice professionals also seem to believe in the above theoretical argument. For instance, a police officer respondent agreed that restorative justice could be very effective if properly implemented and could help in crime control and prevention because it make the people within the community know themselves and would be able to report hoodlums among them to the security services. Another police officer agreed that restorative justice looks "religious in nature", and could reduce violent crimes and

“reconciles the citizenry” to understand the need to keep to the law because, in his opinion restorative justice seems to remind individual offenders to “reconcile or face the music of the law” which could reduce further commission of crime . A prison officer equally, agreed to the relevance of community and religious heads as re-moralising agents of socialization, and capable of effectively resolving dispute among the people when he said that restorative justice will “get the local community heads and religious leaders involved in youth development through moral and civic education” because in his opinion the current method neither gives real support to the victim of crime nor does it sufficiently exert pains on the criminals.

The above opinions supporting the cultural relativity of restorative justice by the respondents in Nigeria may thus have confirmed the theoretical assumption of Braithwaite (2003) that ‘The need for the recognition of indigenous law’ is a factor to the emergence of restorative justice among indigenous peoples around the world. Hence, Braithwaite (2003:15) have argued that the need to restructure ‘the rule of law by allowing the justice of the people’ to bubble up to ‘reshape the justice of the law’ so that ‘the justice of the law could be more legitimately constrained to the justice of the people’ plays a significant role to the emerging restorative justice paradigm.

However, while Alternative Dispute Resolution (ADR) and some native or customary law might share some core restorative principles with restorative justice as discussed above, and reviewed in the literature, not all Alternative Dispute Resolution mechanisms, share the restorative justice philosophy. Hence, Barton (2003:34) argues that there are fundamental philosophical and ideological differences that are readily recognizable in both practices because, within restorative justice programmes, practitioners have a critical choice between taking what he called ‘the surface approach’ or ‘the deep approach’ to the ways restorative justice processes and meetings are to be conducted. The ‘surface approach’ is characterized by the focus on reaching tangible agreements and certain fairly specific material outcomes, such as restitution and compensation to victims, keeping the case out of court, and saving the offender from a criminal conviction and jail (these are principles shared by both restorative justice and ADR mechanisms). But while these

outcomes and goals mentioned are important, they however do not exhaust, let alone do justice, in the idea of restorative justice and in terms of reconciliation and healing (see Barton, 2003). Thus, a good restorative justice practice goes beyond the 'surface approach', beyond the kind of material externalities mentioned above. Because, the fundamental aim and purpose of restorative justice is to bring about closure and healing of the effects of crime, especially the emotional harm, the disconnectedness and social isolation experienced by those most seriously affected by the wrongdoing. Therefore, in consistency with restorative justice ideology, a good reconciliation practice should be strongly directed towards repairing the damage to individual lives and social bonds; by reconciling the parties in conflict and securing a sense of closure for them.

So for restorative justice practitioners in Nigeria to be able to achieve the above aims and outcomes, they are required to have a thorough knowledge, and understanding of 'real restorative justice models', and to take the 'deep approach' in the way they respond to the offending behaviour: looking at its causes, and consequences (which might sometimes be lacking in some Alternative Dispute Resolution mechanisms identified by them in this study). And to be able to do this all participants (victims, offenders and the community) in Nigeria also need to be enlightened on how they can be empowered and encouraged to speak their minds truthfully and without fear. It means that participants on both sides ought to be enlightened and encouraged through appropriate preparation and skilful use of prompts in their meeting to talk, not only about facts and figures, but also about their emotional experiences of disappointment, anger, devastation and fear. It is important to note that in dealing with these emotional dimensions of offending behaviour, true healing and reconciliation are unlikely to be achieved in a fear induced environments (such as in some courts based pilot projects and vigilante group reconciliation meetings ongoing in Nigeria at the time of writing up this thesis). The researcher's concern on this is that if emotional, moral and psychological issues are unexpressed (which are likely to happen at the kind of court based mechanisms being piloted in Nigeria) it hinder not only healing and lasting reconciliation between parties, but also material recompense.

The aim of this discourse here is not to offer a comprehensive description or critical examination of other Alternative Dispute Resolution mechanisms or to pass judgment on the effectiveness or utility of such initiatives. Rather, the researcher is only interested in the relationship between restorative justice and other ADR- that is with the extent to which ADR mechanisms might be viewed as restorative justice. Obviously, ADR is an interesting area of investigations for restorative justice advocates and researchers, as it is understood to refer to all practices outside the legal processes, and restorative justice is often mistaken to refer to these same practices as some respondents in Nigeria have mentioned in the findings on knowledge for instance. Thus understanding the ways in which ADR reflects restorative values, and how it fails to meet the demands of restorative justice philosophy will provide much guidance for evaluation of any proposed restorative justice practices in Nigeria, and will give direction for any future trainings needs of the Nigerian public and criminal justice professionals. This argument for knowledge base trainings was also reflected in the South Africa study as the findings indicated that magistrates and prosecutors were unsure of the principles, application and effectiveness of restorative justice, and there were many misconceptions and uncertainties about various aspects of the approach. It is therefore imperative to set the record straight so that criminal justice practitioners in Nigeria and perhaps South Africa would not think that the problems with the current criminal justice system could be addressed by merely changing a few practices.

Victims' experience of the criminal justice system

Another argument for victims' overwhelming support for restorative justice in this study and perhaps a supporting argument to the 'learned helplessness' theory could be due to how some victims are degraded during court proceedings or treated inconsiderably by some judges, magistrates, lawyers and even offenders in some courts in Nigeria. An example of this adverse prosecutorial proceeding is demonstrated in the following response by a victim that participated in this study:

My friend's experience in court shows that it might be difficult to get justice in court. After subjecting her to all kinds of tests and line of questionings, she was like so to say further humiliated in courts by the defence lawyer. This guy started a drama in court with an empty beer bottle in one hand and a stick on the

other. He tried to poke the stick into the beer bottle unsuccessfully while swinging the bottle. After a while, he kept the beer bottle still, and successfully pokes the stick into it. He then submitted that if the bottle continues to swing it would have been impossible for the stick to penetrate it. There was laughter in court. Even though the judge shouted 'order!' and gave judgment in favour of my friend (the victim), she remained traumatized with that experience (VQIS 069-Sexual Assault).

The above negative and dehumanising experiences of victims in court processing are likely to have impact on their subsequent interaction with the criminal justice system just as Higgins' (1987) theory of self, and social relation argues. Higgins (1987) postulated that persons (including victims in this case) have mental representations of Self and Others: the actual self (who one really is), the ideal self (who one would like to be) and the ought self (who one feels it is one's duty to be). Higgins argues that a discrepancy in expectation of these representations (such as victims' negative mental representation of criminal justice professionals for instance, or lack of self worth because of negative prosecutorial trials), would generate emotional aversion to future interactions. In this case therefore, victims are likely to rethink their future social interaction with the criminal justice system: on what will happen (outcome), what is it worth (legitimacy), can they achieve their goals in the justice system (distrust), if not, what can they do (choice).

Unfortunately, traumatising proceedings are not the expectations of victims of crime for bringing their cases to court. Rather as the victimological review in the previous chapter of this thesis has shown, and supported by the findings of this study, victims' expectations are centred on the need for information and acknowledgment, restitution, reparation or compensation, to ask questions why what happened has happened, and apology and reconciliation where necessary (see Williams *et al*, 2003, Wemmer, 1996, and Shapland *et al*, 1985). But from the above negative experience in prosecutorial trials, it is obvious that, there would be few victims who will take much comfort from the fact that the person who committed crime against them is merely sentenced when there are aspects of the court proceedings that are very traumatic and degrading. Understandably therefore, they are going to be aversive, angrier and more hurt when they are misunderstood, blamed by the law, not heard and publicly disgraced. Moreover, in the criminal justice system rich and wealthy criminals often use their enormous resources to leverage the justice system in their favour through the hiring of good lawyers and the

commissioning of superb clinical or scientific evidence. Thus a good lawyer aiming to win a case could therefore go as far to rip apart victims who have no strong substantive evidence. Hence where victims of crime opt to participate in restorative justice as a way of dealing with their victimisation, it is more likely they will benefit from the process than the conventional criminal justice system. Because, for some victims as demonstrated in this study, what restorative justice process aims to achieve among other potential benefits are: for victim's voice to be heard, the avoidance of the prosecutorial negative experience that the victim, not the defendant, is on trial, and harmony restoration where necessary.

The learned helplessness of victims is also heightened by their negative experiences of distrust in the criminal justice system in terms of fair hearing, and true justice when they report their cases to the criminal justice agents. Hence a victim of burglary and theft in this study agreed that 'restorative justice could complement the task of the judiciary, it could salvage the image of the judiciary, and could restore the lack of peoples' confidence in the judiciary' (legitimacy crisis). Other victims' responses below seem to confirm their fears and distrust:

When you report an accused at the station they (police) will tell you to buy notebook and pen to write down your statement. They will tell you to buy petrol for the van to use for the arrest. If you are lucky and they arrest the suspect they will tell you to leave feeding money while the offender is in cell. You do all these and one day you see the accused person walking the street on bail without your knowing. Your life is in danger. You become the loser and the accused the winner. That is why most people now would usually leave everything to God because 'if a blind man challenges you to throwing stones, be careful he might have one under his feet'. These bad boys know that nothing would happen to them at the station. So let's try something different (VQIS 068-Theft).

This negative experiences and distrust (legitimacy crisis) is heightened by the fear of "telephone justice", and the emergence of what some Nigerians have come to label as "*Jankara* courts" or "*Ochanja* courts" due to corruption and a near absence of incorruptible justice officials in some criminal justice jurisdictions. By *Jankara*, or *Ochanja* courts, the researcher means the use of impostors to face legal charges in the absence of the real offenders in some courts. These practices are often perpetuated by rich and affluent people in collaboration with some police officers, and lawyers who pay hopeless young men to stand trials in courts in place of the real offenders; who in most

cases are children of rich and influential people who are assisted to avoid prison term and criminal records. Similarly, some unscrupulous land lords also use this tactic to forcefully evict tenants who they do not like, or when they want to increase rents by putting new tenants. Hence a respondent notes that ‘in our criminal justice system today, when money speaks the truth is silenced’. So in his opinion, he would want face to face meeting with the offender to avoid misinterpretation of facts, and perhaps, with the help of the mediator the offender might realize his mistakes and might accept to pay back his losses. Similarly, a victim of theft expressed his concern and distrust of the criminal justice sector as he succinctly put:

I want to settle the case and for the truth to come out. If it is police case, police will ask you whether you write your names on the yams (stolen items), if you say no, they will say how did you know that the yams belong to you? They will then convert the yams to their own. And you will be accused as a liar. They will also want you to ‘settle’ (bribe) them. The thief will defeat you if care is not taken (VQIS 039-Theft of farm crop).

These attitudes of some criminal justice agents denies victims of access to justice, and this is why among the poor in Nigeria there is a popular Yoruba saying: ‘*Atebi atare olorun maje a rejo*’. Put literally it mean ‘whether for good or bad may God not let us have a court case’. In light of this legitimacy crisis, many of the Nigerian people are becoming increasingly concerned and outspoken in the new democratic dispensation about the legitimacy of the criminal justice system to demand their compliance and obedience, because it is only when judicial authorities are subjectively assessed by the people as having a high degree of legitimacy that the likelihood of disobedience, lawlessness, and critique of their judicial powers are likely to diminished. Hence, it could be argued by the researcher that perhaps, one reason for the high acceptability of restorative justice by respondents in this study is to create opportunities for the people to “judge the judge”.

One striking thing with this finding is the near universality and consistency of the extent to which the police and other criminal justice agencies side with the rich and victimize the poor people. In a participatory research, including the World Bank’s consultation with the poor involving 20,000 participants in 468 sites in 23 countries, entitled ‘Justice and

Poverty Reduction’ the study found that there was astonishing consistency across communities in the negative impacts of the institutions of law and order on the lives of the poor. According to this finding, the police were the subject of many complaints, being perceived ‘as lax, corrupt and often brutal.’ Poor women in the study had also added concerns about domestic violence and sexual abuse, and about the fact that these matters were often not taken seriously by the authorities. For instance, a participant in Bangladesh says ‘if a poor person is beaten by a rich man and goes to file a case against the rich man, the officer concerned does not even register the case’ (see DFID,2000:3). Relatively, this assertion appears to support the findings of a succession of others studies which highlighted victims’ experiences in the justice system. For instance, victims receive poor response at courts (Rock, 1993; Brereton, 1997) and at the hand of police (Newburn and Merry, 1990; Shapland *et al*, 1985). Cammiss (2006:706) notes that this attitude is especially true in the cases of vulnerable victims, including victims of rape and sexual assault, and victims of domestic violence; and often victims are used either ‘in the service of severity’ or ‘in the service of offenders’ (Ashworth, 2000; Cammiss, 2006). These forms of ‘victim promiscuity’ according to Ashworth fail to address the age-long concerns of victims’ participation in the justice process, and the abuse of victims for the furtherance of selfish aim of the justice system. In the Nigeria case perhaps, the people’s distrust in, and the legitimacy crisis in the modus operandi of the conventional criminal justice system in the country might thus have influenced significantly their responses in this study.

Cost Benefit Analysis of Restorative Justice

In addition to the above argument, victims also expressed opinion that quick dispensation of justice, and the Cost Benefit Analysis (CBA) of restorative justice compared to the prosecutorial trial is very important to them. This is something they think restorative justice is better positioned to deal with. This victims’ concern for the Cost Benefit Analysis (CBA) of restorative justice compared to the prosecutorial justice could perhaps be argued here in an economic term as-the “crimino-econometrics” of restorative justice. Using the analogy of the basic economic theory whereby the price (cost) of a commodity or service affect the relationships or quantities of that commodity that people (service

users) would wish to purchase at each price, it could be argued here that increase in the price (in this case, cost of litigation) might have led to a decrease in the quantity or preference (of the criminal justice services) demanded by victims in this study. Holding other relevant variables constant to isolate the relationship of interest, this viewpoint is demonstrated in the following victims' responses:

Restorative justice saves cost in terms of feeding the offender, and court journeys (In Nigeria, if an offender is arrested by the police it is the responsibility of the victim to pay out 'feeding money' to the police until the offender is formally charge in court). It helps in reducing congestion in prisons, police cells and courts. The victim is also compensated by the offender by returning the amount of money (VQIS013-Fraud/419)

No need to rush cases to courts because of waste of time and money, and risk of transportation. There will be no fear of my offender after serving his sentence. That will help harmonise me and the offender and my neighbours. When a mediator comes between me (victim) and the offender, it is very likely that I will have my money back correctly in spite of time wasted (VQIS001-Civil debt).

The expectations of quick dispensation of justice or quick resolution of dispute vis-à-vis the cost benefit implication are often met with disappointment by most victims that choose to prosecute their cases through the conventional criminal justice system. It appears that the criminal justice professionals themselves seem to be helpless in tackling this issue. Hence, a legal informant in a study conducted in Canada by Regehr and Alaggia (2006:40) stated that 'I don't think any of them (victims of crime) think the process (criminal justice process) will be drawn out so long and that they would be treated so inconsiderately'. In this study, victims have expressed their frustrations with this delay in adjudication when for instance, a victim note that the criminal justice system has failed them because of 'come today, come tomorrow'. Others have mentioned that 'any cases that get to the police become law and protracted'. The Magistrates that participated in this study in Nigeria also confirmed to this assertion as one of them agreed that she would advocate the introduction and implementation of restorative justice in every state in Nigeria because 'it will lead to faster and better dispensation of justice'.

Just like the magistrates in Nigeria who agreed to delay in administration of justice brought before them, Justice Marcia Neave, a Court of Appeal Judge and former chairwoman of the Victorian Law Reform Commission in Australia appears to confirm

this as she declared her support for restorative justice ‘conferencing’ for victims of crime. She said that many of victims interviewed by the Law Reform Commission wanted to be protected from further harm, to tell their story and to have the harm done to them acknowledged by the perpetrator ‘but the criminal justice system had a limited capacity to meet those goals’. She also notes that ‘even with the reforms which have recently been made, many victims will find the criminal justice system difficult’. This according to her means that many victims missed out on having their plight acknowledged (see Liz Porter, 2007), because as the saying goes ‘justice delayed is justice denied’. Hence, the criminal justice professionals in Nigeria that participated in this study testify to the possibility of restorative justice to be able to quickly dispense justice to the satisfaction of victim vis-à-vis the cost benefit, and the “crimino-econometrics” (crime control economics) implications when compared to the conventional criminal justice system. A chief magistrate in this study for instance, agreed that ‘mediation is faster’ and perhaps cheaper, and that ‘the aggrieved party gets compensated faster than in the courts’ which take longer. A police officer also agreed that ‘restorative justice would save both parties as well as court enough time and energy’ because most often, the offenders are known to the victims. In the same vein, a lawyer agreed that restorative justice will go a long way towards solving ‘the ever increasing courts loads and litigation costs’, and that it could ‘bring both parties together towards reaching a speedy and timely resolution of conflict’. Moreover, another magistrate agreed that ‘restorative justice would reduce congestion in prisons’, and offenders can be easily ‘changed, amenable and distracted from committing further crimes’. Other positive responses of the benefits of restorative justice to both victims of crime and the government that choose to implement it include the fact that:

Acceptance of guilt is a mitigating factor, almost like a penitent going to a priest for confession. It would save the accused the odium and ridicule that may go with prosecutorial trial and is also cost effective vis-à-vis administration of justice. (Moreover), adult offenders are more likely to be able to pay reparations than young or juvenile offenders. In addition, true remorse and resentment for crime may likely come from adult offenders than young offenders who may not take genuine reconciliation and rehabilitation seriously (PQIS 026-Lawyer).

If cases are taken to courts, justice is delayed and the offender suffer more than necessary or kept in Awaiting Trial Cells for too long period of time. It (restorative justice) reduces the number of cases to be tried in court; decongestion of Awaiting Trial Cells. (It will also helps) for correction and reintegration of

offenders into the society; to prevent the police arbitrary use of power, intimidation and harassment, (and) for instant reconciliation and restoration (and), direct forgiveness from the victim. The convict is made to feel sorry (PQIS 068-Prison officer)

Moreover, as an “insider” of the criminal justice system in Nigeria, the researcher is arguing that the actions; experience and statistics have shown that the courts have only succeeded in sending people who are found guilty of crime to prison to serve punishment for their crime. But at the end of their sentences the better half of those criminals come out worse and the society is worse off for this costly mistake. For instance, in the Nigeria prison system, the researcher can confirm that there is a culture of unofficial “cell initiation” ceremony amongst the prison inmates within the prison cells which is worrisome. At this ceremony, if two offenders are brought into the prison; and offender ‘A’ is a murderer or an armed robber, and offender ‘B’ is a common thief for instance, at the so called “cell initiation” or “welcome” ceremony the cell provost (an inmate) and other cell inmates would give reverence and respect to the one who introduce himself as a murderer or armed robber, while the common thief when asked to state what bring him to prison, say he stole a chicken for instance, he will be laughed at and mocked by other inmates. And for being the cell inmate with the least or smallest crime, he would be the one to do the cleanings of the cell, dressing of beds and going on yard errands for the self acclaimed “big boys”.

Whereas it is argued by some prison officers in Nigeria that this prison cell practice assists the officers in maintaining discipline among inmates in the cells, in a moral sense, what does this culture of “cell socialization” or experience connote to the common thief? Perhaps, it would mean that the more serious an offence or crime committed before going into the prison, the more respect, honour and reverence the offender gets among the inmates in the cells. With this form of experience, there are possibilities that if the common thief is to return to the prison in his “second coming,” he is more likely to commit serious crime that might earn him the so called respect and honour among the inmates. This discussion re-echoed the arguments of Consedine and Oscar Wilde cited in the literature about the ‘positive harm’ of incarceration of offenders. So as one prison officer respondent in this study rightly put in his response, it appears that “over the years,

the punitive character of the criminal justice system has not solved the problem of crime and prison congestion”. The public now is more aware of the dynamics of imprisonment as it affects the prisoner, the victim and the society. Thus victim-offender mediation will be beneficial to all parties, and cost and time effective to the courts and the prison because they are saved the troubles of congestion and recidivism, and harmony is more likely to be promoted among the population.

Moreover, with restorative justice programme as an alternative, insights into the reasons why serious criminals should be respected in the prison by other offenders (as discussed above) might be heard and understood and if possible the root causes of this criminal behaviour might be discovered and better dealt with. This way the offender, the person offended and the society will be better for it.

Hence, in what appears to confirm the inherent adversities in prosecutorial proceedings, and a form of regret for not recommending an Alternative Dispute Resolution mechanism for his client, or perhaps the disadvantage of numerous adjournments of cases in court in Nigeria, a lawyer respondent in this study states that:

My response [for accepting restorative justice] is based on a personal experience. I had a client whose half elder brother (of the same father but different mother) did not want to relinquish any of their late father’s landed properties. He took this case to court to enforce his fundamental human rights to the inheritance. This case has been lingering on. On this occasion, my client who has to travel all the way from Kaduna to attend court hearing has to return back to Kaduna after the case was adjourned subsequently. On his way back to Kaduna, his vehicle was involved in a fatal accident of which he lost his life. Would the family relationships ever remain the same again? (PQIS 001-Lawyer)

Although an auto crash could happen anytime, including on the way to a mediation meeting, the above instance however demonstrates the inherent danger and disadvantages of incessant adjournments of court proceedings that has characterized the conventional criminal justice system in Nigeria due to case overloads.

Healing and Therapeutic benefits of Restorative Justice

The concluding part of the above quote brings us to what the researcher might call the “Harmony Restoration Therapy” and the “Inter-Personal, and Intra-Personal Reconciliation” benefits of restorative justice to victims of crime. Several studies on restorative justice and victim participation has argue that victim willingness to participate was driven in part by a desire to communicate the impact of the crime, to get their victimization acknowledged by the perpetrator and where necessary receive genuine apology from offender, and to give forgiveness where necessary. These are documented in the victimological evidence in the previous chapter and also supported by the qualitative response in the findings of this study. This simple interaction of victim and offender which could generate catharsis (ventilation of views by victim) has potentials of healing the wound of crime, and the possibility of changing the offender’s criminal behaviour for good. This assumption is premised on the psychological theories of Cognitive Behavioural Therapy (CBT) and Rational Emotive Therapy (RET). Cognitive Behavioural Therapy research (see Strang et al, 2006 for instance) suggests that victims can benefit from extended ‘ventilation’ or ‘reconditioning’ discussions of their prior traumatic experiences if such ‘conferencing’ are held in a safe and controlled environment. Similarly, the sociological theory of ‘interaction ritual’ postulated by Collins (2004:111) predicts that the emotional energy arising from a successful restorative justice conferencing could have positive benefits for victims by restoring their identity and a sense of self-esteem. From this perspective, Herman (1992) argues that recovery from trauma (including crime victimization for instance) requires re-establishment of a (rational) sense of self and (rational) relationships with others (including the offender in this case). As a correctional psychologist/criminologist, the researcher is arguing that the benefit of this interaction to the victim could manifest when the victim who initially was fearful of the offender come to the realization that the offender is not really the “monster” or “macho” she/he thought of. The pleasant experience could manifest when the offender is apologetic and remorseful and begin to beg for forgiveness. At this point the table of shame and, or fear (which formerly was on

the victim) is turned upon the offender and the victim is vindicated where for instance, there have been victim blaming (as in most cases of sex crime for example). This revolutionary transfer of negative energy could be likened to the Isaac Newton's second law of thermodynamics, which postulated that "energy (negative or positive) is never lost but merely transferred from one source to another". At this point, whereas the victim receives psychological healing from his/her victimization, the offender (if rational), takes up the "burden of guilt and shame", this might never heal until he repent or recompense. Hence, Consedine (1999:189) argues that accepting apology and giving forgiveness is not something that the victim does for the benefit of the offender only. It is also the process of the victim letting go of the debilitating rage and pain of the injustice so that the victim can resume living life freed from the power of the criminal violation. The Prison Fellowship International (PFI) reported how a victim of violent rape attests to the significance of this theoretical assumption after meeting the offender when she says that: 'the power and control that was taken from me twenty four years ago have been returned by the man who stole them. We are happy to be part of this programme [VOM] because as the mediator told me the first day that we met, "once a person has been a victim of violent crime, the offender and the victim are always connected", because that person changed your life forever' (PFI 2006:1). Similarly, a victim of police torture in this study mentioned that his interest to participate in restorative justice would be to get apology from his abuser so as to 'reduce stress and elongate his life, and have rest of mind' (VQIS 033).

Restorative Justice and Victims' Empowerment

From the above power dynamics between the victim and the offender, the researcher is arguing that restorative justice is perhaps not an easy option for the offender as some critics would have thought but rather empowers victims, and put victims in control of their fears. For instance, a criminal justice respondent in this study indicated that he would not recommend restorative justice because he thought it to be an "easy justice" that would make criminals to regard crime as "low risk, high dividend" behaviour. He might have made a good point there, but is restorative justice really an easy option for criminals? Perhaps, it is not because in pre-meditated crimes where *mens rea* is

established, the intention of the criminals is to put shame and pain on the victims but in a restorative justice conferencing that table of shame and pain is reversed upon the offenders. As argued earlier, whereas this reversal of “power game” empowers the victims and gives emotional and psychological healings to the victims, it renders the offenders powerless and deprives them of those psychological gains of crime. To support this argument and to demonstrate the significance of this “power game”, a victim of trafficking in this study states that ‘to see the person who torments her life and acted as small god begging her for forgiveness would be a victory at last’. And another mentioned that her husband finds it hard to say “sorry”, so she will go for anything that could make him say “sorry” to her. Hence Oscar Wilde (1854-1990) once said that ‘there is no revenge as complete as forgiveness’ because it perhaps makes the so called and once “powerful” and “fearful” criminal or perpetrator look powerless before his victim and others.

In other response to demonstrate that some offenders might even prefer going to prisons rather than participating in restorative justice, a magistrate in this study note that ‘when individuals know that they will pay for their crimes in monetary terms, and by accountability, [as more likely in restorative justice] they will shun crime because, some commit crime so as to go to prison and eat free foods’. And similarly, others who steal cash or valuable items might as well prefer going to prison rather than returning the stolen cash or valuables to the victims as exemplified by a prison officer respondent thus: ‘There is an instance whereby an apprentice stole a large sum of money from his boss and gave it to his mother to keep for him. When he was arrested he pleaded guilty and claimed he has squandered the money. He was sentenced to two years imprisonment. After eating free foods in prison for two years, on his release he set up his own shop with that money’ (PQIS 014).

From these instances, it appears that restorative justice at some points to both the “powerful” and the “hopeless” criminals might not really be seen as an easy option per se because it tends to remove psychological and economic benefits of crime from them, or the “subjective utility” they hope to gain when they offend or steal valuables items from

victims. For instance, in societies where the homeless has no options of housing, or the hungry has no means of getting foods to feed, their commission of crime so that they can go to prison and eat free foods, and have a bed space might be something they cherished far more satisfying than the restorative justice process which might remove that intended “subjective utility”. An example of this argument can be seen among some homeless/offenders who are always at the revolving doors of homelessness and prisons: when they are released from prison they go ahead to commit crime so that they can return to prison rather than remaining homeless and starving in the outside world.

In adversarial court proceedings the “power game”, and the “subjective utility” arguments and the “turn-table” psychodynamics enunciated above are largely ignored instead, it encourages the defendant (offender) to deny responsibility for the offence, to manipulate the justice system, and to play by the rules of the game by pleading ‘not guilty’, and to challenge the victim and the prosecution to prove its case beyond reasonable doubt. Thus victims often experience secondary victimization in the legal process of ‘proving the case beyond reasonable doubt’. But at the heart of restorative justice lies a direct opposite of the legal “game-playing,” based on accountability, the offender’s understanding of the impact of the offence, accepting responsibility for it, and taking an active part in repairing the damage (which some offenders see as a hard option).

The following quotes from victims who participated in this study strongly confirm the above theoretical assumption as factor for participating in restorative justice. This is exemplified as follows:

In my case, I want to ask questions and get answers. Because, in our society here, when something bad happens to you, the first thing some people would say is that ‘are your hands clean’. They want you to believe that maybe the ‘gods’ or God is angry with you. If the offender says why he did what he did in the presence of my people they will know that my hands are clean. This will restore my dignity before my people and I may also stop accusing God for what has happened. This will make me happy again (VQIS 069-Sexual assault).

I think (with restorative justice), I will have peace of mind. My life will be elongated when peace is achieved. Stress is reduced. Stronger friendships and ties are developed. I will stand right in the sight of God, if I forgive (VQIS 033-Police brutality)

In view of the above points, Goren (2001) argues that facing and talking directly with the offender, in an environment of safety and support, is a remedy for the powerlessness, fear and confusion that frequently accompanies victimization. Because very often, victims lose control over themselves during the commission of the offence, and police, lawyers and the court then take control of the case. But voluntary participation in restorative justice conferencing as the victims in this study have mentioned is a way for victims to handle their post-victimisation anxiety and fears, and to hear that the offender is sorry or someone is sorry on his/her behalf.

Restorative justice and the trilogy of restoration

From the above quotes from victims, there appears to be a kind of trilogy of restoration in addition to the healing they might receive from forgiveness and apology, or acknowledgement. For instance the following quotes from victims: ‘...I may also stop accusing God for what has happened’, and ‘I will stand right in the sight of God if I forgive’ brings some spirituality dimension to the restoration. This psychodynamic of restoration and the trilogy of “reconciliation to self, God and the offender” is perhaps something the conventional criminal justice professionals and process might not understand or be prepared to accommodate. However, this psychodynamic arguably, is crucial to victim healing because even after an offender have been jailed for an offence victim continue to ask his/her ‘god’ or God questions why ‘it’ or ‘He’ should allow what happened to have happen. This question which often burdens most victims of crime could only be answered through the ‘truth telling’ processes in restorative justice conferencing. And it is only through this knowledge of the truth that perhaps, the tele -etiological accusation of victimization could be resolved within the victim (sometime victims blame themselves; they think what happened to them is a wrought of God or ‘god’); and in some cases this consciousness draw them closer to their ‘god’ or God. This reconciliation to ‘god’ or God is likely to reinforce their Inter-Personal and Intra-Personal restoration. Moreover, based on the argument of the Rational Emotive Therapy and the Cognitive Behavioural Therapy, the apology by the offender and the forgiveness he might have received from the victim is likely to keep him off from further offending , as he/she too might be striving to get closer to his/her ‘god’ or God. With this, restorative justice

appears to have significant ‘value for money’ as one stone is thrown to kill two birds— healing for victims and desistance for offender.

In what appears to test the above theoretical discourse in an experimental and controlled group research to ascertain the efficacy of restorative justice conferencing on Post-Traumatic Stress Disorder (PTSD), Angel (2005) found that the experimental group’s Post-Traumatic Stress Disorder (PTSD) lessened significantly compared to a control group that went through the conventional criminal justice system. Describing the effectiveness of restorative justice on the emotional and psychological impact of crime on victims she noted that ‘What you have here is a one-time program that’s effective in producing benefits for the majority of people’. A victim of crime that took part in this study in Nigeria appears to confirm this assertion when in his response it was stated that ‘restorative justice would help him to get over the trauma he felt after the crime’ (VQIS 052).

Restorative Justice and Serious Crimes

From the above findings and discussion it appears that Umbreit *et al*’s (1999) ‘Victim-Sensitive Offender Dialogue’ (VSOD) cited in chapter three, and the restorative justice process of seeking apology and forgiveness for healing and reconciliation could be useful in addressing some serious crimes and perhaps the emotive and sensitive conflicts in domestic violence for those whose concerns are for restoration and reconciliation. Although this study in Nigeria was not set out to specifically investigate opinions of victims of sensitive crimes, a few victims of domestic violence that participated in this study appears to support the findings of Daly (2005) that restorative justice process can address domestic violence between those who want to continue the relationship because, it can create opportunities for restoration of relationships, if that is what is desired, as some victims of domestic violence may want to continue the relationship as partners and not want to break up a family where siblings are involved (as mentioned in this study). Hence Hoyle (1998:154) found that forty two percent of domestic violence victims in her study withdrew their cases after the arrest of the perpetrators. Cretney and Davies (1997)

also found that twenty four percent of domestic violence victims in their study withdrew their cooperation for prosecution of the perpetrators. Similarly, a study on ‘Gender, Justice and Truth Commissions’ conducted by the World Bank (2006:28) found that prosecution is not always the form of justice sought by women affected by violence but women in most cases link ‘justice’ with adequate education, health services and education for their children. For instance, a victim of domestic violence that took part in this study and the response of respondent: VQIS-067 earlier cited appear to support the above argument as could be exemplified in the following quote:

I would rather resolve the case before a mediator than the court to retain privacy. Since the perpetrator is my husband, I would prefer the matter is resolved privately with less aggression. I would like a one on one dialogue with him with the spirit of closure and to forgive him if he accepts guilt. This would solve the problem of: cost of litigation, lack of privacy, aggressiveness of litigation and expediency of action (VQIS 056-Battery)

But considering the fact that the sample size and number of domestic violence and sex offence victims in this study are small, general application of this argument should be taken with caution. However, it could be argued from these findings, that while some victim advocates may well have concern for the participation of victims of domestic violence in restorative justice, it appears that the expectation of reconciliation with partners weigh far more heavily on the part of some victims than other concerns. As a support to the above discourse, a psychologist and professor of family medicine at the University of California, Johanna Shapiro (2006:61) shares her experience working with victims of domestic violence in a poem entitled ‘You Think You Know Me’. This poem and the accompanying commentary by Johanna Shapiro (2006:61-62) demonstrates the intricacies involved for researchers, service providers, and victim advocates regarding the experience of victims of domestic violence, and how best to help them. In view of these intricacies, a professor of social work State University of New York at Albany, Carlson Bonnie (2006:64) argues that ‘if we as helpers fail to inquire about what is good in the relationship-which presumably is what keeps her (victim) there-we are losing an opportunity to understand from her perspective what it take to be with this sometimes abusive man’. This discourse perhaps points to the need for dual interventionist approach-restorative versus retributive models in family conflict because, as Hitchlings

(2005:100) argues, the statutory arrest and prosecution ‘fails to recognise that victims want or need different things’. Not all victims, for example, will want to criminalise their partner as some victims have mentioned in the findings of this study. The use of restorative justice for sensitive crimes therefore requires further research.

Restorative apology and forgiveness

It is however important to recognise that on the notion of apologies and forgiveness as a healing process, not all victims indeed hope for an apology and public acknowledgement of their pain and suffering. In addition, forced apologies are in-fact a form of mockery and secondary victimization to victim, and may not be accepted by victims. So restorative justice facilitators needs to know the “when and how” of apologies and forgiveness in restorative justice meeting or conference if they are to be effective as healing tools.

Moreover, to some kind of people there are certain criteria or “ingredients” required to be demonstrated by offender for true reconciliation, healing and forgiveness to be complete and effective. For example, in a case of a secondary victim who lost his father in an auto crash, reconciliation and forgiveness in that case might have been difficult if the offender did not actively take responsibility for his action by participating in the medical and burial process of the deceased person. The relevance of the active participation of the offender in the burial process as a factor to the amicable reconciliation of the dispute was exemplified in the statement of the secondary victim thus:

In my own case, the driver was very remorseful. He did not run away from the corpse (accident scene). Others would have done that. He knelt there with his hands in blood up begging ‘it is my fault, please do not kill me’. We were tempted to hit him, but voluntarily we went with him and the corpse to the hospital. When my father was confirmed dead, he wept. He paid the mortuary bill, bought the casket and assisted in giving the old man a befitting burial (which is what my father would have wanted). What else would you have done to such a man? So when the police came for prosecution we said, *ba lofi, lokochi yayi* (no case, it was his time) (VQIS 072-Secondary victim of motor accident)

The active “ingredients” here are the ‘active participation’ of the offender to demonstrate his genuine remorse, and taking responsibility for the ‘befitting burial’ of the deceased. As the statement has demonstrated the befitting burial ceremony of the deceased watered

down any unexpected grievances. Perhaps, some people (secondary victims) are less likely to have confidence and support for any reconciliation or justice process that undermine these basic ingredients of reconciliation in an event of death of their loved ones. This concern was demonstrated by a secondary victim of ethnic violence as exemplified in the following quote:

In our case now, look at how government (is) has been handling the case. People have been killed; government did not allow people to identify the corpse of the dead. They said taking the corpses home for burial would cause another *katakata* (trigger fresh violence or reprisal attack). So they went and buried them in mass grave. *Tufia Kwa!* (God forbid!). My father's spirit will never rest in peace until his remain is exhumed and given a befitting burial in a reburial ceremony in our home town (VQIS 071- Secondary victim of ethnic violence).

This strong concern for befitting burial of the deceased as a tool for effective reconciliation of dispute demonstrate the varying notion of the significance of the repose of the souls of the dead in most African cultures (including some societies in modern Africa), where the community or group is seen as a continuing self-perpetuating entity embracing both the living and the dead. Most Africans (especially the rural dwellers in Nigeria) until now believe that breach of a taboo or omission of some appropriate offering to the supernatural spirits by an offender may cause illness or disease to someone or the community as a whole, other than the offender or wrongdoer (see Omale, 2006). It is also believed that these spirits may linger in places where they were murdered, which is regarded as abominable not only in the eyes of the living but also of the supernatural ancestral spirits who it is believed perpetually hover around and to protect the community (also see Bohannan, 1957; Robert, 1979:42; Finnström, 2003:218; Baines, 2007:92).

In as much as this supernatural belief may sound unscientific to the educated and some Western criminologists and peace practitioners, it has however helped in crime control, reconciliation and reintegration of offenders in most African societies especially Nigeria. Moreover, this knowledge of cultural variation in the criteria and concepts of reconciliation is imperative for western restorative practitioners who often are likely to be presiding on conflict resolution issues in Africa.

Restorative justice and Multiculturalism

From the above discourse, does the variation of the concepts of reconciliation among cultures discussed above have any negative impact on the internationalization or possible implementation of restorative justice in multicultural settings? An answer to this question is imperative because as reviewed in the literature there are debates between some academias, and practitioners as to whether restorative justice can be effective in multicultural settings. And in a study conducted by Gehm (1990) and reviewed in the literature, he found that among the 555 eligible victims willing to participate in Victim-Offender Mediation, 47% of them were more willing to participate if the offender was white as were the victims. And, Bottoms (2003:110) argues that restorative justice is unlikely to work as well in contemporary (urban/multicultural) societies as it does in more traditional ones. This is because according to him restorative justice, even in traditional societies only works well if the victim and offender have either a ‘thick’ (family) or ‘thin’ (culture) relationship with each other. In multicultural modern societies, where there may be no relationship at all, other than that related to the criminal event, Bottoms (2003:110) argues that any attempt to use a ‘blanket’ delivery of restorative justice will always achieve modest and/or patchy results. Similarly, Umbreit (2001:66) argues that in multicultural society the cultural background of victims, offenders and mediators are often different which if not carefully handled ‘carries a risk of miscommunication, misunderstanding, or worst all, revictimisation’. And Smith (1995:157) also argues that, ‘for reintegrative shaming (restorative justice) to work, a broad moral consensus must exist on what is good and bad conduct, on right and wrong’. It thus appears that one limitation the internationalization of restorative justice might face is in dealing with cross-cultural situations where decidedly different ideas of what is required for restoration prevail. So can a restorative justice process work if the parties involved have different conceptions of restoration?

Following this emerging discourse in the literature that appears to point to the fact that restorative justice might be difficult to implement in multicultural settings, this study surveyed opinions of the major ethnic groups in Nigeria-a multicultural country. The

study found that in the Nigeria context there is a high acceptability rate among the major ethnic groups that participated. For instance, as the result has shown in the quantitative data, there were 91.7% acceptability rates among the Hausa and Yoruba respectively, 71.4% among the Igbo, and 79.3% among the other ethnic nationalities.

Admittedly, cross cultural mediation may not be as easy as it sounds because indeed, the negotiation process is often more difficult than that of imposing a settlement. However, Llewellyn and Howse (2002:10) suggest that it is worthy of the effort 'given that negotiated resolutions tend to last' because the 'processes' through which the parties are to negotiate a resolution may be the issue between the two groups. This case thus requires that the different communities or cultures come together to agree upon the details of the 'restorative process' before such a process begins.

So bringing people face to face with one another as in Victim-Offender mediation helps dispel the myths and stereotypes each has of the other. It allows the offender or perpetrator to see the victim, hear his/her story and experience in his/her own words; allows the victim to see the offender or wrongdoer as a person instead of some evil or heartless criminal; and it allows the community to see the truth that both victim and offender/wrongdoer are not unlike the rest of the community. The restorative justice encounter the researcher would argue is thus fundamental to building cross-cultural bridges and integration of cultures as it challenges the stereotypes that justified segregation in most multi-cultural societies of our time. Hence, Umbreit (2001:66) suggests that 'the continuing movement toward adaptation of the restorative justice paradigm could be enhanced only if practitioners, advocates and policymakers become increasingly sensitive to and knowledgeable about cross-cultural issues and dynamics that impinge on the practice and on the very notion of justice'. For example, if a conflict occurs within an African community, common sense argument would agree that a restorative process might seem appropriate in this situation as the community shares a common sense of what is required for relationships of social equality to exist. However, what if one of the parties is not African? Whose idea of restoration should prevail? And to complicate the matter, suppose the other party comes as a member of a culture with its

own distinctive ideas about how social equality is to be achieved. In all of these instances, are the prospects of a successful restorative justice process lessened in the absence of a shared understanding of restoration?

Perhaps, the answer to the above question the researcher would suggest ought to be a confident no, because restorative justice processes are not contingent upon a shared cultural conception of restoration. In fact, restorative justice processes may serve as a mechanism to discuss different ideas of restoration and come to some compromise appropriate to the particular context in question. The resolution sought in a restorative justice process must be the product of negotiation between the parties with a stake in the matter. By definition then what is needed to restore the relationship cannot be dictated by one party for this would exclude the other party from the process. It is helpful at this point to note that the goal is not restoration of one party or the other but rather the restoration of the relationship between these parties. It is clear, given this objective, that any agreement cannot be achieved at the expense of either party. Rather it must be the product of negotiation between them, and there must be assurance that no further harm will result from the agreement. This negotiation is itself an important step towards restoration of the relationship. Thus, in the context of a cross cultural conflict, restorative justice requires that no single idea of restoration be imposed but rather that both be brought to the table and discussed in order to find the appropriate compromise for resolution of the particular situation at stake.

Another international research experiment in favour of restorative justice processes in cases of cross-cultural context needs to be mentioned here. In the 1998 report of the New Zealand's Ministry of Justice, entitled '*Restorative justice: The Public submissions*,' some of the respondents to the survey on restorative justice conducted by the New Zealand Department of Justice maintain that restorative justice may in fact address cultural differences better than other practices because it 'makes room within the process for different cultural expressions'. Hence, as the researcher has argued in one of the theoretical assumptions in this thesis, one of the strengths of restorative justice mechanisms lies in their open texture to hear both parties' feelings. Restorative justice

processes thus allow the participants to express their experiences from their own perspectives and to decide for themselves what is important to resolving the conflict, although there are no presumptions made regarding the nature of the conflict and the resolution that would exclude some cultural expressions and not others. However, in the bid to restore social equality, restorative processes must open the door for social dialogue about how such equality is best achieved (see the equanomics theoretical discourse in the literature review for instance). Thus the dialogical nature of restorative processes makes room for the expression of different perspectives in working towards restoration.

From the foregoing discussion, and the high rate of acceptability of restorative justice by the overwhelming majority of respondents and across the major religions and ethnic nationalities in Nigeria, perhaps a step towards healing the political and ethno-religious conflicts and violence in the country lie in the restorative justice paradigm.

Victim autological benefit of restorative justice

In addition to the above discourse, the need to “connect” with the offender to hear why the offender did the crime and to get answers to the “why me?” question have also been indicated in this study to have a “victim-autological” significance to the victims. By this it means that because there would not be enough police officers to police every victim of crime after victimisation, some victims have reported that their participation in restorative justice to ask question, and get answer to the “why me?” question could help them learn from the offender “how to avoid being a victim, and how to prevent themselves from future crime and victimisation”. This knowledge for self policing and safeguards (otherwise known as victim-auto logy) as a reason for possible participation in restorative justice is exemplified in the following quotes by victims of assault and theft respectively that participated in this study. For instance, a victim of assault in this study note that her reason for the preference to participate in restorative justice is ‘to know the reasons why the offender did what he did, so as to know how to protect herself and family from possible future occurrence’. In the same vein, a victim of theft states that his reason for preference for restorative justice meeting is ‘to know how to avoid being a victim, and

how to curb future crime’. This finding demonstrates in two folds-the “victim-autological significance” and the “crimino-econometrics” values of restorative justice to crime prevention and control. Because, prevention means reducing the opportunities for crime and prevention according to the popular saying ‘is better (and cheaper) than cure’. Crime prevention through the knowledge of self policing and safeguards is therefore more cost-effective in reducing crime than reactive measures, especially in cases where poor people’s access to physical security, police protection; insurance cover and justice are by no means guaranteed. This finding is perhaps an acknowledgement that restorative justice has ‘value for money’ (vfm) for victims of crime and the criminal justice professionals alike. Hence, a police respondent in this study succinctly put:

Crime today is a syndicated thing. Sometimes or most often, the people we arrest committing the crimes are agents and not the gang masters. Crime cannot be eradicated by arresting and punishing the ‘hopeless boys’. We can only eradicate or control crime by getting to the real masters. Perhaps this ‘story [truth] telling justice’ would help us get to the masters of the bad boys. This form of justice is likely to help the police in crime investigation and intelligence gathering because truths are more likely to be told as a form of mitigation for non prosecution (PQIS 077-Police officer).

This is true because effective crime prevention requires effective policing through the investigative skills that would help the police to build cases on facts and evidence rather than on forced and false confession. The failure of forced and false confession in crime prevention was acknowledged by a prosecutor respondent in this study as demonstrated in the following quote:

From experience, most crimes committed are not well investigated. Some accused person plea out of fear, and some having been tortured at the police cell, tends to agree to any suggestion. But where rooms are given for mediation, we might find out reasons and truths (PQIS 034- DPP)

A police respondent also acknowledged that the truth telling mechanism in restorative justice is also a way of making the communities know who the criminals among them are. This is imperative because community involvement in crime control encourages “community crimino-vigilance” as exemplified in the following quote:

Restorative justice will be very effective if properly implemented and will help in crime control and prevention. By this, the people within the community will know themselves and can be able to report to the security agencies the activities of hoodlums within the community (PQIS 036-Police officer).

This is an acknowledgement of the relevance of restorative justice as a tool in community policing because community support and participation is undoubtedly a significant key to effective policing. If a less adversarial atmosphere is created, people living in communities in Nigeria may be able to report suspicious people among them without fear of being invited to court to give evidence and be cross-examined, and may be able to find a common ground for rebuilding and normalizing their relationships. Thus people who live and work in an area in Nigeria if given the opportunity to contribute to crime control are best placed to identify the problems facing them and suggest possible solutions to those problems.

One possible community solution to crime is the ‘name and shame’ or the Braithwaite’s theory of ‘re-integrative shaming’. Some respondents in this study acknowledge the significance of this theory as could be seen in the following quotes by victims:

Restorative justice would call the offender to order so that he does not do same to another person because in our Igbo parlance, *‘Ikpuhe arurumara Onye Ogaranya Kara ya mma n’onwuru’*. That is, exposing a rich man or famous person of his crime is more painful than putting him to death (VQIS 064-Theft).

Some of these boys would be really ashamed of appearing before their people. But if it is police case, even when they are locked up in prison, some will lie to their people and friends that they travelled (during the period of their incarceration) and nobody would know the truth (VQIS 070-Theft).

The above “name and shame” advocated by victims in this study is consistent with Braithwaite’s theory of ‘re-integrative shaming’, however, the researcher is arguing that in Nigeria this should be done with caution to avoid ‘stigmatize shaming’ that often drive some people to commit suicide, or to prevent vigilantism, or the re-emergence of vigilante groups such as: the Bakassi boys, OPC, MOSSOP, MASSOB, Arewa, and Egbesu sagas in Nigeria where suspected and confessed criminals were often burned alive on streets in the late 1990s.

This observation is very imperative because as the findings in this study have demonstrated, victims in Nigeria are rarely as eager for revenge or retribution as might be expected. So killing offenders (as in the case of vigilantism, or the “boy oyez” experience

in Lagos for instance), or diminishing the rights of offenders and increasing the rights of victims are not really what victims want in any justice process. Instead, victims in this study like other studies have consistently mentioned: quick dispensation of justice to save time and cost, the need for apology and accountability from offenders so as to be able to give forgiveness to enhance their recovery from the wounds of crime; reconciliation with offenders; to ask offender the ‘why me?’ question and get answer to this question with the possibility of protecting themselves and families from future crime (future self safeguards); to help offender change behaviour and re-integrate into society; and for compensation.

Compensation and reparation

Where compensation is mentioned in this study by victim, it is not in terms of ‘restitutory justice’ (as argued in chapter two) that has some connotation of mandatory repayment. It is seen as means of reformation and rehabilitation of the offender. Hence, most victims in this study have mention offenders’ accountability and apology before compensation. Because, compensation would be meaningless to some victims without remorse and attitude change of offender hence, a victim states that ‘allowing the offender to face up to his sin is the first step to his rehabilitation. So I will want apology, and if he has the means of paying for the damage, I would request compensation (VQIS 051)’. The liberal understanding of ‘if he has the means of paying for the damage, I would request compensation’ as mentioned by this victim is consistent with the fact that restorative justice often recognizes the fact that the offender may also have been a victim (of distributive or social injustice for example). This statement demonstrates support for the balanced restoration discourse in chapter two of this thesis (especially on the section on equanomics and equity theory of restoration).

There is also a moral dimension to this, especially the need to re-moralise the offender, as the victim have mentioned that ‘allowing offender to face up to his sin is the first step to his rehabilitation’. Perhaps, this re-moralising argument is premised on the principle that a good law and justice system should strives to prevent crime from happening in the first place, because as it was dramatised in a play that looks at how victims of crime move on

after violent crime, and where those acts of violence come from, a victim, Marian Partington (2008) who sponsored the play argues that ‘the acts of violence don’t come from nowhere; it’s only damaged people that damage people’. This play entitled ‘Damaged People Damage People’ tried to draw on how ‘failed’ or ‘failing’ society is failing the youths. So in Nigeria for instance, rather than asking the right question about how adult crimes is impacting the youth criminal behaviour, the focus has been on how to continuously ‘warehouse’ them through the institution of prison.

Admittedly, some youths have taken the culture of violence and crime rather than going straight, however, it could be argued that perhaps the spate of violent crimes in the country, including militant attacks on oil installations and hostage takings, might rapidly subside if the Nigeria State summons the needed social will and sincerity of purpose to addressing the escalating poverty, and youth unemployment in the country. Thus the perpetuation of injustice through indiscriminate arrest, and imprisonments of young people in Nigerian communities who are perhaps reacting and resisting the high rate of state crimes in every way they can will not solve the problem of crime, and violence in the country.

It appears from this argument and the findings of this study that justice in Nigeria is a moral issue, and so what constitutes justice in the heart of most victims is parallel to the philosophy of retributive justice. This phenomenon, is consistent with the basic assumptions of restorative justice as identified in the work of Marshall (1998, also see Onuoha, 2007:74). Marshall (1998:2) identified six basic assumptions of restorative justice that are consistent with the expressed opinions of respondents in this study. First, ‘crime has its origins in social conditions and relationships in the community’. Second, ‘crime prevention is dependent on communities taking responsibility for remedying those conditions that cause crime’. Third, ‘for crime to be addressed effectively, victims, offenders and community must be involved’. Fourth, ‘justice system must be flexible and creative in its response to crime’. Fifth, ‘partnership between justice agencies and community is important for addressing crimes’. And sixth, ‘justice must incorporate multiple objectives of the parties involved in or affected by crime’.

These six basic assumptions of restorative justice are consistent with the expressed opinions of respondents (victims and professionals alike). Thus, effective crimes control in Nigeria and victims' satisfaction in the justice process is strongly dependent on collaborative participation, and transformation of the affected communities and 'stakeholders'. The starting point should be to consult all the interested communities and 'stakeholders' and design methodologies of carrying along 'all' (including those that have expressed resistant opinion based on principle, or defensive solidarity) to the restorative justice initiative. Because, according to Onuoha (2007:86), the likely spoilers in the introduction and subsequent implementation of any restorative justice initiative in Nigeria will be the criminal justice professionals themselves, who benefit from protracted conflict and violence because many police officers have made money from arrests, and defence lawyers have made money and fame from crime prosecution and its associated court room dramas.

However, what this study has consistently demonstrated is that victims of crime and most criminal justice professionals in this study are disenchanted with this court room dramas and the failure of the Nigeria social system that in itself contribute to crime and victimization. This viewpoint supports argument elsewhere (see Smith, 2007: 229) which suggest that effective justice policy need to listen to the stakeholders concerned (for instance, victims, communities, and the professionals), and to work with these groups to identify solutions that reduce crime and fear of crime among the people. The implication of this for Nigeria is that for any justice and social policies and practices to be effective, and to deal with crime and violence in the country, the Nigeria society need to locate the historical, cultural and socio-political conditions and contexts in which they operates. By this it means that in the Nigeria context, there are needs to look back at history, and reconstruct the past to heal the future. National healing for Nigeria therefore requires judicial accountability, political responsibility and transparency, social and corporate responsibilities if Nigeria must demand personal responsibility from the citizenry, and to earn the legitimacy and trustworthiness it deserve from the ordinary people.

CHAPTER 8

CONCLUSION/RECOMMENDATIONS

The costs of offending behaviour undoubtedly are huge to society, to offenders, and to the victims of crime all over the world. Whereas this study is mindful of the suggestion of Smith (2007) on drawing ‘uncritical evidence from other jurisdictions of the world’, in the Nigeria context however, the high cost of litigation, the nature of court proceedings and slow pace of determining cases (i.e. come today, come tomorrow), and the associated corrupt practices, and high legitimacy crisis has made the conventional criminal justice administration unattractive to a vast majority of the respondents in this study. As demonstrated in the findings, the failings of the Nigerian criminal justice system at the time of research make the respondents to be generally positive about the restorative justice initiative. Thus the return to traditional alternative dispute resolution mechanism, or restorative justice to fill in the gap and taking up responsibility for quick dispensation of justice at the community level with victim participation in the justice systems have received commendation by the respondents in this study. This overwhelming support for restorative justice as demonstrated in the findings of this study might also be due to the fact that most respondents did not see restorative justice as a ‘criminological tourism’ initiative (Smith, 2007), or an imported ideology. It might also be due to the fact that restorative justice has its root originally in the major religions and traditional philosophies of Nigerians (as in other cultures), which relates to repentance, ablution, confession, forgiveness, and reparation-ideals that are commonly shared in the major religions of Christianity, Islam and traditional religion in Nigeria. Moreover, in traditional Nigerian religion, and cultures which existed before the coming of the received English criminal law, any person who causes a breach of the community harmony is asked to make amend through reparation or restitution depending on the offence committed.

This argument and the result of this study supports the argument of the former Attorney General and Minister for Justice of Nigeria (Bayo Ojo, 2005) who argues, that the advantages of the traditional justice system for the Nigeria citizenry include 'its flexibility, access to justice for the poor, and use of simple procedures in line with the norms, value and culture of the people'. It is also equitable, cheaper and operates diverse dispute resolution mechanisms such as restorative justice for instance. These alternatives to court proceedings are becoming popular as a complementary dispute resolution models all around the world.

However, in spite the fact that majority of the respondents in this study support a 'community based' model of restorative justice compared to a 'court based' restorative justice model or the conventional criminal justice system, penal sentencing would continue and remain an important practice in the Nigerian criminal justice policy and all over the world. Evidence of this can be seen in the 'court based' Alternative Dispute Resolution pilot project ongoing in Nigeria at the time of writing up this thesis, and the way 'plea bargaining' is used more for cases concerning politicians compared to that of the common criminals. Moreover, as it has been argued by the researcher in this thesis, the aim of this 'Administrative court' is perhaps to quicken the administration of justice, to reduce the work loads of the judges and magistrates, and to decongest prison and police cells rather than restorative justice focus in particular. So, while restorative justice might operate as a complementary system in Nigeria in the near future, it is however, and probably not going to be given an autonomous status by the criminal justice policy officers in the country because of the fear of losing their stronghold, or as Consedine (1999) put it, that is the only way the politicians and people in government can demonstrate to the citizenry and the poor masses that they are in power and that they are doing something about crime, law and order. It is perhaps an indication to show to the masses that they are being 'tough' on crime without perhaps being 'tough' on the causes of crime. As the findings of this study have demonstrated, there are a number of problems associated with this rigid criminal justice focused policy.

First, the moral philosophical basis for the claim that offenders deserve imprisonment rather than restoration with victims, mercy and, or forgiveness has been an ongoing argument as we have seen in the literature review. Over reliance on imprisonment according to this argument (which has been demonstrated in relevant chapters of this thesis) appears no more than a primitive demand for vengeance because it perhaps, does not demonstrate any sense of being 'tough' on the causes of crime. Hence, the researcher may ask should imprisonment be inflicted on offenders even where no positive goodwill would be achieved. For instance, in a case of a desperate poor man who steals a loaf of bread just for his survival (as reviewed on the equanomics/equity theory in chapter two), or in a case of a remorseful offender who is unlikely to commit further crime? The infliction of punishment on grounds of offending behaviour, regardless of the circumstances of the individual offender, the study has suggested may not only be pointless but also a demonstration of social injustice.

However, 'Just desert' or deterrence theorists such as Duff (2003) and von Hirsch (2003) for instance, argue that there is a moral obligation to punish offenders, or that punishment should be given when it is deserved on consequentiality grounds. They have also argued that people should be punished for what they have done and not for what they might do in future. To them, the desert principle acts as a limit on the distribution of punishment, and their principle of proportionality is expected to provide a ceiling on the amount of punishment. However, the findings of this study are in sympathy with the argument of McLaughlin and Muncie (2003:250) about the 'difficulties of determining levels of proportionality' which often lead to greater severity of punishment (as reviewed on the conception of restitution in chapter two).

Several victims of crime in this study have expressed different non prosecutorial routes to justice and victim satisfaction (see findings and discussion chapters). These findings contradict the implicit aims of the theoretical argument put forth by 'just desert' advocates because, on the journey of victimisation different victims travels on different routes to justice (i.e. not all victims would want their offenders punished), and moreover,

it is difficult to translate the principle of proportionality, (the idea that punishment should reflect the degree of harm done) into practice.

As stated in chapter two of this thesis, McLaughlin and Muncie (2003:250) identified two problems arising from this principle of proportionality. The first, is the problem of what they called 'cardinal proportionality' which is how to determine in absolute terms what '*quantum*' or amount of punishment is proportionate to a particular offence, and the second is that of 'ordinal proportionality' which is how different offences and penalties attached to offending behaviour are to be ranked (for instance, should a robbery case deserve more or less punishment than a multi-million monetary embezzlement by corrupt men in power?).

On the issue of whether restorative justice could serve the interests of victims of crime, or serves as a better alternative to prosecution or not, great claims have been made for restorative justice as we could see in the empirical review of literature in this thesis regarding the effectiveness of restorative justice. Although in reality, many restorative justice programmes actually in operation have been introduced in response to young people's criminal behaviour, and usually in response to more minor offences, opinions of victims and the criminal justice professionals in this study however, demonstrate that restorative justice could be applicable to all kinds of crimes across age, gender, locality and cultural or ethnic nationalities provided it is the voluntary wish of the victims. In the vast majority of cases in this study, the restorative justice model of 'conferencing', where the offender and the victim meet before a convenor and with other support persons in attendance was more preferred to the respondents than the indirect mediation models. So that an 'outcome' reached is acceptable to both the offender and the victim. Where this happens, the conference is expected to replace the normal court appearance and sentencing process.

The findings of this study thus support the conclusion of Strang *et al* (2006:304) which demonstrated that crime victims have consistently said that they are better off after taking part in face to face restorative justice conferencing than they were before. And this

satisfaction was regardless of the kind of crime they have suffered, the kind of community they lived in, the point in the criminal justice process, or the physical location of the conferences.

In view of the consistency of support for restorative justice, all states and territories in Australia and New Zealand for example, now have some type of conferencing in place for juveniles, although the criteria and extent of its use varies considerably between jurisdictions (see Morris and Maxwell, 2003). Many respondents in this study that supports the restorative justice initiative see it as a more effective way of dealing with criminal behaviour, and victims' satisfaction than the conventional court system. Restorative justice they argued could allow the victim to contribute directly to the process of seeking remedy and justice and the offender is both directly confronted with the effect of his or her crime, and can accept responsibility and offer a resolution to the harm caused by the offence. This is a viewpoint that is also shared by the vast majority of other victims, and restorative justice advocates around the world as demonstrated in the literature review.

However, it is wise to remain circumspect about the potential of restorative justice for creating the conditions for a radical, non-discriminatory approach to justice for all victims of crime and offenders. Hence, Daly (2003) has advised restorative justice advocates to 'mind the gaps' in restorative justice practice. Some significant questions such as those identified by Barton (2002), and Marshall (1999), as highlighted in the literature review, remain about the theory and practice of re-integrative shaming for instance as a model of restorative justice in the highly individualistic and mobile communities of our time. McLaughlin and Muncie (2003:248) also have argued that restorative justice is yet to show that it will not be mobilized against the most vulnerable sections of the society or indeed be employed for trivial offenders without any reduction in the use of the conventional custodial sentences. Furthermore, the lack of accountability, corruption, prejudice and the absence of protection for the offenders in terms of appeals to legality and due process remain major areas of concern in some restorative justice practice (see Wright, 1996). And, how restorative justice process can

be used effectively in multicultural societies of our time without stereotyping and prejudicing victims and offenders of colour is a matter for further research and investigation. However, as the researcher has argued in the discussion chapter, the knowledge of cross cultural psychology for restorative practitioners, and the use of culturally specific principles within the restorative justice framework could benefit people of colour, and bridge the relationship gaps between them and the others. Moreover, because of the disproportionate numbers of people of colour who are often offenders or victims of crime or delinquency, the importance of the knowledge of cross cultural psychology for restorative justice practitioners, and a culturally specific restorative justice approach cannot be overemphasised.

In terms of the impact of restorative justice on the criminal justice system, restorative justice proponents such as Braithwaite and Zehr argue that the system is at least as effective as current court processes in preventing re-offending, and that it provides a serious alternative to the current sentencing regimes of 'just deserts' and deterrence that are trapped in ever escalating cycles of punitiveness. However, in a global context we are not sure at the moment; whether restorative justice is 'opposing' or 'reconcilable' with criminal justice. For instance, Daly and Immerigeon (1998) note that restorative justice is viewed as a set of alternatives *within* the formal justice system by diverting less serious cases and providing opportunities for victims and offenders to meet and make amend. Restorative justice practices according to them are *contained* by formal criminal justice in some cases. Some examples are the Australian wagga wagga model and England's Thames Valley project which are *contained* and seen as alternatives *within* the conventional criminal justice system. So in Australia, New Zealand, Germany and Canada, restorative justice is now part of the national legislations and *contained* within the criminal justice system (see Netzig and Trenzcek, 1996, Morris and Maxwell, 2003). Similarly, in Britain, Young and Hoyle (2003:276) for instance, have reported that restorative [police] cautioning for young offenders has been put on a statutory basis by the Act 1999, and cautioning for adult offenders remains governed by the Home Office guidelines as contained in Circular 18/1994. According to this report, 'the fact that cautions make up one in three of all formal criminal justice disposals [cautions and

convictions] is testimony to the continuing importance of cautioning processes in responding to crime'. This statement demonstrates that restorative cautioning in the UK is *contained* and seen as an alternative *within* the conventional criminal justice system.

However, when this study ask victims of crime in Nigeria to indicate their preference between the "community based" model and the "criminal justice based" model (as defined in the previous chapters), majority of the victims indicate preference for the community based model compared to the criminal justice based model (see quantitative data result). This finding thus shows support for both a community based model and, a criminal justice based model; but the question of how restorative justice practices administered in a governmental context (and subject to bureaucratic and professional capture) is a case that needs further research and re-examination because of what Young (2003:413) called 'defensive solidarity' among criminal justice professionals. In this case for instance, restorative justice might be managed negatively to discredit its effective potentials (i.e. give a dog a bad name so that it can be hanged).

Although evidence has demonstrated massive support for restorative justice, or as Wright (1996:227) emphatically put: 'the penal system is in trouble with the emerging restorative justice system globally', because 'sentences are inconsistent and ineffective'. Restorative justice practitioner are however warned that if restorative justice practices are introduced in an adversarial and punitive way, it could lead to the following identified problems: pressure on the victims to take part, infringement of offenders' rights to due process and inconsistencies among outcomes (restitution or reparation). Wright (1996) warns that victims could feel under pressure to co-operate with the process, if the alternative is that the offender will be prosecuted or imprisoned; and that victims should only be kept informed and consulted but not asked to make or influence decisions about the restorative justice outcomes. This is important so as to avoid putting undue pressure on victims, and not to use victims either 'in the service of severity' or 'in the service of offenders' (Ashworth, 2000). Similarly, the rights of the offenders might be infringed by the offer of diversion out of the criminal justice so that they could 'get it over with' a lighter penalty. This offer may induce some offenders to plead guilty when they might have a valid

defence against the charges. Another concern which needs to be guarded carefully in restorative justice process is that different victims might make different reparation demands on their offenders for similar offence-that is, some might ask little or nothing whereas, others might demand too much (as was in the case of pound of flesh with Shylock).

Based on the foregoing, Daly (2003:219) warns restorative justice advocates to ‘mind these gaps’ because more generally, how young persons and victims orient themselves and what they hope to achieve from restorative justice practices might be different from what advocates and restorative justice literature might imagine. This advice to restorative justice advocates is important because some people do not have the mental map of what this justice form looks like, how to act in it, or what the optimal result is. Besides, not all have the requisite skills and desire to participate in a restorative justice process. Hence Daly argues that effective participation in restorative justice requires a degree of moral maturity and empathic concern, which many people, especially young people, might not possess (this argument thus, does interestingly call into question the suitability of restorative justice for adult offenders). Thus advocates of restorative justice need to be mindful of the facts that it will take time for people to understand that they can get justice in restorative justice practices rather than the court, and to become familiar with this form of justice and its social relations model of response to crime.

The question before us therefore is whether any of the above warnings of restorative justice negates the progressive potentialities of restorative justice *per se*. As McLaughlin and Muncie (2003) note, such warnings demonstrate in part the pitfalls of poor implementation and the subversion of restorative justice’s principle in specific ‘projects’. Hence, this researcher would recommend effective practice trainings for restorative justice practitioners; coupled with the knowledge of cross cultural psychology in view of the globalised nature of restorative justice. In Nigeria for instance, more work needs to be done to test theory with practice so as to distinguish ‘evidence’ from ‘argument’, and to ascertain the possibility of effective restorative justice projects in the country. So there is the need to pilot restorative justice programmes among the various cultures in the

country, and across gender, age and types of victimisation including more serious crimes as domestic violence; among others to provide evidence based research.

In an effort to bridge the above gaps and regulate international practices, the United Nations in its document E/CN.15/2002/1 (p.3) sets out guidelines to support the idea of promoting restorative justice measures in criminal justice systems amongst Member States. In this document, the United Nations noted that ‘restorative justice would serve as a supplement to the established criminal justice practices, especially in areas where such practices had not functioned adequately’. The United Nations therefore agreed that an international instrument on restorative justice be developed and drafted as a guideline for the application of restorative justice measures for Member States and thus recommended that:

Research on restorative justice be conducted and information collected be disseminated widely among Member States, the Institutes of the United Nations Crime Prevention and Criminal Justice Programme Network and, where appropriate, among other international, regional and non-governmental organisations.

Second, Member States that had adopted restorative justice practices should make information about those practices available to other States upon request.

Third, Member States should assist one another in the development and implementation of research, training or other programmes, as well as activities to stimulate discussion and the exchange of experiences on restorative justice.

Fourth, Member States should consider the provision of technical assistance to developing countries and countries with economies in transition, on request, to assist them in the development of restorative justice programmes, and finally, that Member States should consider making voluntary contributions for the support of such technical assistance.

ORIGINAL CONTRIBUTIONS

What the researcher has done in this thesis with respect to the above United Nations' recommendations is to enhance international and public knowledge by contributing original evidence to the body of knowledge in restorative justice and victimology in terms of, African restorative perspectives to the theories, concepts, models and application of restorative justice (see findings and theoretical discourse respectively). The research findings have also provided possible answers to the question of "whether restorative justice could be a better alternative to penal sentencing", and have demonstrated how restorative justice paradigm could be improved and, or benefits from the African traditions and conception of restoration and reconciliation. This afrocentric contribution to restorative justice theory and principle is important for international academia and practitioners who are often commissioned to chair dispute resolution mechanisms in Africa. Because the success or not of their efforts of resolving conflicts in Africa could strongly be dependent on their knowledge of the four core African philosophy of thoughts identified by Jenkins (2006:300): cosmology (African 'world view' of conflict, crime, and reconciliation), axiology (African 'values' of restoration), ontology (African 'nature' and conception of persons), and epistemology ('source of knowledge' for Africans). For instance, while Eurocentric understanding of 'justice' and 'conflict resolution' is predominantly determined by their understanding of the 'rule of law', most African victims derives their understanding of those concepts from 'folkography': the philosophical commitment to cultural norms, values, beliefs, practices and the connection of these aspects of culture to the wider social way of life, and spirituality : the individual's personal relationship with his/her God or god (also see Jenkins, 2006). So it is imperative to note that while the cardinal principle of criminal law argues for retributive justice on the premise that where there is a wrong, there must be a remedy (*ubi jus, ibi remedium*), the researcher is arguing that the absence of a criminal prosecution does not always necessarily mean that redress and justice for victims cannot be achieved by other restorative means.

In terms of the most contentious issue in restorative justice literature of whether restorative justice would benefit victims of crime (especially victims of violent crime), this research findings shows that the potential benefits of restorative justice to some victims of crime and to governments that wish to implement it is enormous. To government, restorative justice has “value for money” (vfm) compared to the conventional criminal justice when the "crimino-econometrics" of both policies are considered.

For victims of crime who want to participate, restorative justice offers the possibility to answer the "why me?" question. To some victims of crime restorative justice is not only seen as a model of justice but also as a vehicle to Intra-Personal Harmony (IPH), and Inter-Personal Reconciliation (IPR). Perhaps for some victims of crime restorative justice is a "Harmony Restoration Therapy".

To other victims of crime (especially victims of property crime) the answer to this important question ("why me?") has a "victim-auto logical" implication. By this, it mean that some victims have mentioned that since there would not be enough police officers to protect every victim of crime, the answer to why the offender targeted them might serve as a means of self-protection and, or their property to prevent further re-victimisation where necessary. Although, while victims' vulnerability is not an invitation on their part to be victimized, to some victims, restorative justice could however, serve as a knowledge base for self-safeguards, or an auto-policing strategy. Other reasons why the respondents think restorative justice is preferred compared to the conventional criminal justice, and its potential benefits to the criminal justice system are that:

Restorative justice could help decongest the courts, police cells and prisons and enhances quick dispensation of justice in nations where access to justice and formal judicial forums is difficult and expensive, and unbiased treatment of disputants is by no means guaranteed. Moreover, the less crowded the prisons, courts and police cells of any national jurisdiction the more confidence the citizenry and the international community would have on the criminal justice system of such nations, as an effective criminal

control agency and the more improved would be the image of the country, and criminal justice agents of those nations.

Restorative justice diverts young and minor offenders from imprisonment thereby preventing the breeding of future hardened criminals and “crime wise” cultures which are learned through associations in prisons. It also reduces stigmatisation of offenders compared to imprisonment. Moreover, the youths are the future and backbone of development in any country so “warehousing” large number of these valuable human resources through the institution of prisons is an attack on Human Capacity, and Sustainable Developments.

Restorative justice reduces further fear of crime amongst victims of crime because of the restoration of harmony between victims and offenders. And, the Cost-Benefit-Analysis of restorative justice compared to prosecution for both victims of crime, and government is decisively in favour of the restorative justice paradigm.

All in all, the findings of this study demonstrated that the Nigerian respondents are generally positive, and in favour of restorative justice because restorative justice values and philosophy are seen to be related to their understanding of African informal restorative mechanisms. Their responses also appear to show that they are ‘reacting’ to the institutional failure and the modus operandi of the Nigerian criminal justice system at the time of research. Respondents also appear to have identified that restorative justice is a crime preventative mechanism (see the victim-autological discourse), a truth seeking justice, and a mechanism for economic, and sustainable national development initiative in both values and principles.

The findings from this study have thus demonstrated that restorative justice could be a successful model of international justice judging from empirical evidence from several countries in the literature review, and the views expressed by participants of this study. The findings also demonstrate supports of the Nigerian criminal justice professionals towards the possibility of adapting the restorative justice model in the country.

Restorative justice could thus work well side by side with the criminal justice, as demonstrated by the numerous empirical evidences if the probable pitfalls identified in this thesis are taken care of, and the Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis are well evaluated. From the foregoing, there are indications that the world might be returning gradually to what some might call “primitive” model of justice. Hence, Sterne (1993) has advised developing countries and countries with economies in transition the need to reform their penal system because over-dependence on imprisonment according to her ‘is punishing the offenders as well as the government’ that practices it (perhaps in terms of economic cost, and waste of human capital development). This statement demonstrates support for the “crimino-econometric” argument of this thesis that restorative justice has “value for money” (vfm) for government that might wish to implement it.

LIMITATIONS AND SUGGESTIONS

Understanding the possible limitations to this study is imperative because the success of any potential restorative justice project in Nigeria on the basis of the findings of this study would be as strong as knowing its weakest points. So, though the findings of this study is generally positive, generalising the findings of this study should be taken with caution because of the sample size of the respondents and the sampling techniques used for this study compared to the general population of the study area-Nigeria.

For instance, most respondents are selected by intermediaries assisting the researcher at fieldwork. This selection could have been based on their familiarity with the respondents or personal inclinations of the respondents to participate. This method was condoned because within the challenging context of accessing respondents for this study, insisting for greater numbers of sample size and more ‘representative’ data especially from people dealing with emotive issues (such as victims) would have been insensitive, unethical and unattainable.

Moreover, the qualitative findings presented in this study are based on an interpretative analysis of opinions of a small number of respondents who have not actually experienced

restorative justice. Therefore their responses could have been speculative rather than factual and so more research should aim to establish whether the concerns presented here apply more generally and in practice, so as to test implementation and the effectiveness of restorative justice in contemporary Nigeria. It is also entirely possible that the findings presented in this study reflect the interests of the researcher as much as the interests of the respondents, due both to the set of questions in the questionnaires and the interpretations put on the resulting discussion. The questions in the questionnaires that initiated responses from the respondents were clearly informed by the researcher's knowledge of the existing debates in restorative justice literatures cited in this study. However, there are good reasons to believe that the findings of this study reflect the respondents own true opinions. First, the interpretations of qualitative responses, and themes arrived at by the researcher, his wife and friends yielded facts other than one analyst's prejudices. Moreover, the success of the use of 'Structure Laying Technique' (SLT) at pilot study confirms the researcher's ability to interpret qualitative data objectively. Second, the findings of this study come as a surprise to the researcher himself, because of media reportage of crime in Nigeria at the time of research. However, there is, as always, still a need for the findings of this study to be replicated, piloted and extended, by further research or by other researchers.

In addition, the opinions of the respondents is accepted based on the assumption that respondents understood the meaning of restorative justice as presented to them by the researcher. And for the criminal justice professionals, their positive responses is anticipatory of the fact that there would be co-operation between the criminal justice agencies such as the police for instance to refer cases, as well as unhindered cross referrals opportunities between state courts and restorative justice forums where and when they exist. This is important because often in Nigeria, there are professional 'superiority clashes' among the agencies of justice on trainings, resources, and legislative frameworks in mainstreaming new justice initiatives which often delays effective administration of justice.

Moreover, for centuries now, informal restorative traditions of justice or dispute resolution in Nigeria in urban centres for instance, have long been ignored, in part owing to entrenched positions of undesirability of 'informal justice' in preference for the 'received English Criminal Law,' so it cannot be assumed that the conventional criminal justice policy will soften its power base to easily accommodate restorative justice practices, and in view of the fact that this study was not a programme evaluation research, the certainty of effectiveness of restorative justice practice among victims, and the kinds of offenders and offence suitable for mediation in Nigeria cannot be taken for granted.

In another development, this study did not interview or survey the opinions of offenders in Nigeria because the researcher took it for granted that restorative justice would be an acceptable concept to most offenders in view of literature evidence, and the fact that most critics of restorative justice see it as a 'soft option' for offenders. However, offenders in Nigeria operate in a different geographical and socio-cultural climate. So would opinions of offenders in Nigeria on restorative justice be different from the general expectation? This poses another line of inquiry for further studies.

Another potential limitation to effective restorative justice projects in Nigeria is that, if corruption and impartiality has been an issue in the conventional criminal justice system, and in businesses, to what extent then would a 'community based' and/or a 'court based' restorative justice projects be free of this social cankerworm. One might be tempted to argue that a 'community based' restorative justice projects (where community or religious leaders are mediators) might be effective considering the fact that most of the respondents in this study signifies interest in it. But there are potential problems with that considering the fact that some traditional leaders, or religious leaders who want to seek political attention, and to become relevant in the eyes of national government (known as *Aso Rock* relevance: Nigeria's equivalence of the White House) often initiate ethnic or religious conflict in their communities, and afterwards pretends to be the only most influential person who have the clout to stop the violence. And, because of the level of poverty among the youths in the country, it is usually not difficult for some unscrupulous

ethnic, communities, religious, groups/ organizations, and political leaders to mobilise, manipulate and channel their members who are often induced with petty rewards and false promises to commit violence act based on the personal interests of the leaders (see Boer, 2000 for instance).

There are concerns also that traditional system in Nigeria have broken down, and weakened over the years due to acculturations, new generation evangelistic Christianity, colonialism, and involvement of traditional chiefs in politics. Hence, over the years traditional and cultural leaderships have been severely weakened in terms of status and popular authority. Some are not officially recognised again in post independence constitutional reforms. So the once respected traditional chiefs and providers to their people, elders and chiefs now live in extreme poverty and sometimes lack the basic requirements to perform their duties as traditional leaders. Many have lost the respect of younger generations of youths. Hence, Baines (2007) have reasonably asked if present African elders and chiefs are up to the task of leading an independent and neutral traditional justice system. This is important considering the facts that traditional and cultural leaders are not immune from the endemic corruption in Africa. And more specifically, some assume the position of cultural chief based on political connections to the government, not on heritage or community recognition (often referred to as Abuja chiefs). Other challenges for repositioning the African restorative traditions include: how such mechanisms would be enforced when either the victim or offender is non-conformist of the culture and traditions (as it is prevalent among the new generation of born-again Christians in Nigeria).

It is also important to question how effective any restorative justice project in Nigeria can be successful if representation of women in position of authority are yet to be fully and properly recognised in the country because of its patriarchal traditions.

Moreover, in the absence of controlled research aimed at finding the effectiveness and preference of restorative justice model for victims of crime, offenders and the community in Nigeria, the unproved arguments for the desirability or undesirability and effectiveness

of restorative justice forums by some people need further research. However, from the findings, the policy of turning a deaf ear or blind eye to the preference of restorative justice models is in fact long overdue for replacement as the evidence in the literature review, and the empirical findings in this research have proved.

Recommendations

In spite of the above potential challenges to restorative justice practices in Nigeria, the researcher is arguing, and recommending to the Nigerian criminal justice system and other jurisdictions that, restorative justice has potentials for national healings and reconciliation. It also brings justice closer to the people and the people closer to justice. Moreover, victims have demonstrated the need to make a choice between going to courts or going for restoration, and this opportunity should be provided to victims because if the medical industry have a three tier system of: primary healthcare, secondary healthcare and tertiary healthcare where patients can make a choice of treatment depending on their pains or severity of illness ; and the educational system could equally have three tiers: primary, secondary and tertiary where learners can make a choice of going for further studies or not depending on their economic and intellectual capabilities, why can't society encourage primary and secondary judicare-restorative versus retributive interventions? Moreover, we do not necessarily make offenders better by 'warehousing' them through the institutions of criminal justice or by merely taking away their liberties; or by subjecting them to degrading and inhumane treatment and making them share one cell with two equally undesirable characters. Perhaps, our society now has a choice- the soft option of simply locking offenders up and subjecting them to a brutal degrading regime that will almost certainly guarantee their return to crime, or the hard option of challenging each offender to become a law abiding citizen as could be seen in 'restorative justice'.

If those concerned with criminal justice sector reform in Nigeria for instance, and the international donors in general wish to have any real impact on improving access to justice for the majority: bring justice closer to the people, and the people closer to justice as earlier discussed; and to control crime, then the potentials of restorative justice, and the

vital role played by traditional and informal justice mechanisms for the majority of Nigeria people especially those living in communities (rural/urban) needs to be acknowledged. Restorative reconciliation is deeply needed in the Nigerian society, because a vast majority of the people has been harmed and there are unresolved pains, no matter how subtle. What the Nigerian government do with these unresolved and repressed national pains and anger will make the difference between national harmony or more division and hatred. Hence, policy makers in Nigeria need to seek impartial knowledge, and to broaden their understanding of how and where effective restorative justice forums operates (such as Australia, Canada and New Zealand for instance), and pursue policies which take full account of their existence and success. So consolidation of peace as well as maintenance of peace in the long term in Nigeria cannot be achieved unless the people are confident that redress for pains and grievances can be obtained through legitimate and non intimidating structures for the peaceful resolution of disputes and fair administration of justice. Perhaps as Smith (2004) argues, the time to 'give restorative justice a fair crack of the whip' in Nigeria is now.

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APPENDIX

List of documents in the appendix

Map of Nigeria-The Research Area

Questionnaires/ Research instruments (VQIS and PQIS)

DMU Human Research Ethic Approval Letter

Access letters (from Prof. Brian Williams, and the Researcher himself)

Transcribed Field notes (for victims and professionals)